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

AMP Group Submission

Case Study 1: Life Insurance

1 October 2018

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

AMP Superannuation Limited, NM Superannuation Pty Ltd and AMP Life Limited

Submissions

OVERVIEW

1 AMP welcomes the opportunity to provide these submissions in respect of the evidence received by the Royal Commission in its insurance, Round 6, hearings.

2 AMP Superannuation Limited (**ASL**) and NM Superannuation Pty Ltd (**NMS**) are Trustees responsible for the management of superannuation funds offering superannuation products, of which insurance is a component.[1] This insurance component can include life insurance, income protection insurance or salary continuance insurance (**IP Insurance**) and total and permanent disability insurance (**TPD Insurance**).[2]

3 AMP Life Limited (**AMP Life**) undertakes the day-to-day administrative functions in relation to the insurance component, with such administrative functions being outsourced to it by ASL and NMS.[3] In every case, the respective Trustee is the "policy owner" of the relevant insurance policy and adds the members of the superannuation fund as individuals insured under the policy as beneficiaries.[4]

4 Counsel Assisting the Royal Commission has raised three specific insurance issues in relation to the management of insurance by the Trustees and AMP. These are:

(a) whether AMP prices certain default premiums for "non-smokers" on a statistically appropriate basis;

(b) whether AMP properly manages members' accounts after death; and

(c) whether AMP properly manages permanent incapacity benefits in MySuper products.

5 AMP rejects each of the open findings put forward by Counsel Assisting on these matters.

AMP prices premiums on a statistically appropriate basis

6 The first issue concerns members who leave a specific corporate superannuation plan (e.g. – on termination of their employment) and default to a different (and typically higher) insurance premium in their new superannuation plan. Counsel Assisting has suggested, erroneously, that members who "delink" in this way are assumed to be "smokers" and are, effectively, defaulted to a "smoker" premium rate.

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[1] Witness Statement of Paul John Sainsbury in response to Rubric 6-30 and 6-31 dated 10 September 2018 (**Sainsbury Statement 6-30 and 6-31**) (Exhibit 6.233), [15]-[17] and Schedule 3

[2] Sainsbury Statement 6-30 and 6-31, [11]

[3] Exhibit PJS-1 to Sainsbury Statement 6-30 and 6-31 (**Exhibit PJS-1**), Tab 2 (AMP.6000.0255.0099 at 0101; 0103). See written submissions of AMP in respect of the round 5 hearings dated 31 August 2018 at [6], [13] to [17]; [29] to [41].

[4] Sainsbury Statement 6-30 and 6-31, [12]

7 This is not correct.

8 None of AMP Life, ASL or NMS assume that any member who delinks from a corporate superannuation plan is a smoker. These members are not defaulted to premium rates that apply only to smokers.

9 To the contrary, members who delink are either grouped with a common pool of insureds or, alternatively, a "hybrid" category of insureds that includes both smokers and non-smokers. In cases where the member is defaulted to the "hybrid" category, the member is given the option of declaring that they are a non-smoker and being moved out of a "hybrid" category. The member is reminded of this option every year.

10 The premium rates applicable in all categories of insurance offered by AMP Life are based on sophisticated actuarial assessments which reflect the risk of claim for all lives in the applicable pool.

AMP properly manages members' accounts after death

11 The second issue raised by Counsel Assisting concerns the deduction of life insurance premiums from members' accounts after death. The issue that has been raised by Counsel Assisting is whether AMP is continuing to inappropriately charge life insurance premiums to members after death.

12 It is not.

13 It has always been AMP's policy to refund premiums incurred after a member's death. It is inevitable and appropriate that premiums will continue to be deducted after a person's death and before AMP is notified of that death. AMP has always had a process in place to refund these premiums upon payment of the life insurance claim.

14 In April 2018, an issue arose in relation to the *manner* in which these refunds were calculated and processed for payment. The issue did not concern whether AMP *would* refund the premiums, as it has always been AMP's policy to do so. The issue concerned process errors that were revealed for the first time in April 2018, and which were reported by AMP. AMP rejects any suggestion that it was aware of these process errors historically and that it has previously failed to report them.

AMP properly manages permanent incapacity benefits in MySuper products

15 The third issue concerns a particular case study into a member who was delinked to Flexible Lifetime Super (**FLS**), and was not provided with insurance coverage at the time of delink or when MySuper was introduced. The issue that has been raised by Counsel Assisting is whether it was appropriate for this member to be delinked into a superannuation product without insurance.

16 The member whose circumstances were examined by the Royal Commission was part of a corporate superannuation plan before he left his employment and

delinked from that plan. That corporate superannuation plan did not provide members with default insurance. Given this, AMP does not accept that it was inappropriate for this member to be defaulted to FLS in circumstances where FLS also did not provide the member with default insurance.

17 AMP provides members who delink from corporate superannuation plans insurance in accordance with the requirements of MySuper. These requirements were met for the member concerned.

18 Regardless, AMP stands by the ex gratia payment it made to this member, and considers that the member received a good outcome in all the circumstances.

19 We deal with each of the open findings in more detail in turn.

AMP PROPERLY PRICES PREMIUMS ON A STATISTICALLY APPROPRIATE BASIS

Open findings:

(a) *It is open to the Royal Commission to find that AMP may have engaged in misconduct by authorising the deduction of premiums from members' accounts where those premiums are calculated on a statistically inappropriate basis. That conduct may amount to a breach of sections 52(2)(b) and (c) of the* Superannuation Industry (Supervision) Act *1993 (Cth) (**SIS Act**).*[5]

(b) *It is open to the Royal Commission to find that AMP may have engaged in conduct falling below community standards and expectations by not adequately ensuring that members were aware they had been defaulted to an insurance rate that assumed the member smoked in circumstances where it was unlikely that the member smoked.*

(c) *It is open to the Royal Commission to find that AMP may have engaged in conduct falling below community standards and expectations by refusing to refund premiums incorrectly charged to the member who was charged a smoker rate in circumstances where that member was not a smoker.*

(d) *It is open to the Royal Commission to find that the causes of the misconduct and the conduct falling below community standards and expectations included AMPs culture and systems which failed to promote the best interests of members in various ways, including by failing to ensure that members were provided with default insurance cover on a statistically appropriate basis.*

20 These findings are not open on the evidence. AMP objects to these open findings and submits that the propositions put forward by Counsel Assisting are predicated

[5] It is assumed that the reference to "statistically inappropriate basis" is a reference to ASIC Report 529 "Member experience of superannuation" dated June 2017 at [84] (Exhibit 6.228, [RCD.0025.0003.0334]), which was referred to in cross-examination of Mr Paul Sainsbury in the context of questions related to default rates based on smoker status (at T5881.35-5882.15).

on two incorrect factual premises and are otherwise unsupported on the evidence.

AMP does not assume that members who delink are smokers and there is no application of "smoker" rates

21 It is commonplace that members will leave a specific corporate superannuation plan (e.g. – on termination of their employment) and default to a different superannuation plan.

22 Once AMP is informed that the member has ceased employment, the member maintains their superannuation account, but that member's account is "delinked" from the corporate superannuation product to the delink destination product. In the majority of cases, the delink destination product is determined by the corporate superannuation product to which the member originally belonged and is as per the default product settings.[6] The exception to this is where the employer has specifically requested that their employees delink to a specific product.[7] Many of the Royal Commission's inquiries of ASL, NMS and AMP Life relate to this process of delinking and the default rates that are applied to members as part of this process, as discussed below.

23 AMP does not assume that members who delink from a corporate superannuation plan are smokers.

24 When a member does delink from a corporate superannuation plan, the member may default into either:

(a) a product that uses only one set of premium rates which apply to all members;[8] or

(b) a product that uses multiple categories and corresponding premium rates, with a "hybrid" category being the default.[9]

In neither case does AMP assume that a delinking member is a smoker.

25 In the first case, no distinction in respect of smoking status is made amongst the members of the "delinked" pool, and a standard premium rate is applied consistently across the pool. Like all premium rates, the premium rate that is applied is calculated based on an actuarial assessment of the risk profile of all of the lives in that pool.

26 In the second case, there are two ways in which the "hybrid" category may co-exist with other categories. First, the "hybrid" category may co-exist with two other categories – namely a "declared smoker" category and a "declared non-

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[6] Witness Statement of Paul John Sainsbury in response to Rubric 6-69 dated 5 September 2018 (**Sainsbury Statement 6-69**) (Exhibit 6.234) at [58]
[7] Sainsbury Statement 6-69 at [58]
[8] Sainsbury Statement 6-69 at [38]
[9] Sainsbury Statement 6-69 at [35]

smoker" category. In these circumstances, the "hybrid" category only includes members who have not provided any declaration as to their smoking (or non-smoking) status and their smoking status is unknown. This is the case in respect of the majority of products that apply a "hybrid" category.

27 The second is where the "hybrid" category co-exists with one other category – namely "declared non-smoker". In these circumstances, the "hybrid" category includes members who have not provided a declaration as to their smoking status as well as declared smokers. Since 2006, products have ceased using only two categories (with one being a "hybrid" category). As explained in paragraph 26 above, the majority of products now utilise a "hybrid" category that co-exist with two other categories.

28 In either case, it is wrong to say that AMP assumes members are smokers or that it applies a "smoker" rate by default. It does not make any such assumption, and does not apply any such rate by default. Rather, in every scenario, AMP calculates the premiums that it charges to members based on actuarial assessments that reflect the risk for the relevant pool of insureds based on the information available to it.[10]

Non-smokers are not charged "smoker" rates by AMP

29 Where ASL or NMS is the trustee, there are no products that categorise members, by default, as a "smoker" for the purpose of charging insurance premiums.[11]

30 The "hybrid" rates that may be charged to a member on delinking are not "smoker" rates, but rather rates that reflect a risk assessment for all lives in the hybrid pool – smoker and non-smoker. It is a rate calculated by reference to the many variables associated with all of the members of that risk pool. All other variables being the same, these premium rates are in most cases less than the premium rates for a category of members that comprises only declared "smokers".

31 In some products, it is open for a member in the "hybrid" pools to declare themselves a "non-smoker" and, if they do, to take advantage of a reduction in premium rates.

32 The only time when a "smoker rate" is applied is when there is a separate and distinct category for declared smokers.

33 Contrary to the factual premises on which the open findings are predicated, no member is currently presumed to be a smoker. Thus no member is currently defaulted to "smoker" status or required to pay smoker rates by default.

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[10] T5878.43-45

[11] Sainsbury Statement 6-69 at [34]

The trustees have always acted in the best interests of members by applying a statistically appropriate calculation for premiums

34 Counsel Assisting appears to be suggesting that to comply with sections 52(2)(b) and (c) of the SIS Act, the setting of a default rate should solely consider the interests of members who have not provided a declaration as to their smoking status. That is, that such members should simply be charged the same rates as those which have declared themselves to be non-smokers based upon statistical evidence from 2014-15 extracted in ASIC Report 529.[12]

35 This analysis is too simplistic. It gives no regard to the manner in which premiums are calculated; that insurance is in essence the assessment of risk; nor does it consider the impact of such an application to each other member of the proposed group.

36 The inclusion of members who have not declared their smoker status into a combined pool with declared non-smokers would increase the premiums for the declared non-smokers. This is because the premium would be calculated based upon the lives in that risk pool. In considering the appropriate policy, the trustees must act in the best interests of all members, including minority members, and consider how a balance might be struck as between those interests. It is not to the point that, statistically, there may be more non-smokers than smokers in the general population.

37 The open finding presumes that the information pertaining to the number of smokers to non-smokers in the general population is statistically relevant in setting the premium for the "hybrid" category. The actuarial assessment of risk for a risk pool is based on sophisticated actuarial assessment of the actual historical claims experience and known underlying risk factors (such as age or gender), rather than any unknown underlying risk factors.[13] To the extent that there are expected to be fewer claims due to there being fewer smokers than non-smokers, this is reflected in the actuarial assessment of the claims experience. This approach provides a statistically valid calculation without the need to make any assumption about the smoking status of members. To assume that all members are non-smokers would ignore the risk associated with this unknown element and be a statistically invalid assessment of risk.

38 Finally, as discussed below, where more than one rate is applicable, members have, and always have had, the opportunity to declare their smoking status upon delinking by responding to their welcome letter or at any time after that. Since 2014, members are not only notified of their ability to declare their smoker status in their welcome letter but are reminded on each and every annual statement.[14] Members have an opportunity to make the necessary declarations if they elect to do so at any time. There is a reminder annually. In this way, where more than

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[12] Exhibit 6.228 [RCD.0025.0003.0334]
[13] T5879.1-2
[14] See paragraph 53 below and the references therein.

one rate is applicable, premiums are deducted by the trustees based upon information provided and disclosures made by the member.

Notification by AMP to members as to their smoker status has at all times has been adequate and appropriate

39 AMP rejects a finding that it does not properly inform members of their ability to make a "non-smoker" declaration on delinking. Members are told about their ability to make this election when they delink.

40 In considering this issue, the Royal Commission examined one case study. This case study considered the application of default rates on delinking as they applied in June 2005, some 13 years ago, for the product FLS. **The delinking rules that applied in 2005 changed in 2006**.[15] Accordingly, the case study is of no utility to the Royal Commission and cannot form the basis of any open findings as it is factually irrelevant to contemporary products and their members.

41 Regardless, by way of background, the FLS Member considered in the case study became a member of a corporate superannuation plan, which was part of the CustomSuper Plan, on 30 June 1988.[16] On 20 June 2005, the FLS Member ceased employment with his employer and was transferred to FLS, which was the relevant delink destination product.[17]

42 On 22 June 2005, a welcome letter to FLS, a transfer statement for the CustomSuper plan and a Comparison Sheet were issued to the FLS Member.[18] At the base of page 1 of the welcome letter was a non-smoker declaration that the FLS Member could have completed and returned to AMP.[19] The declaration stated:

> *If you're a non-smoker, you can reduce the cost of your insurance cover by completing the following question and returning it to us.*

43 The wording "**Non-smoker declaration**" is in larger print and bold type and the 'Non-smoker declaration slip' is in a different colour to the rest of the welcome letter so as to draw the reader's attention to it.[20] The FLS Member was further advised of his opportunity to declare his personal smoker status on page 3 of the welcome letter where it read:[21]

> *We may be able to reduce your premium if you are a non-smoker. To allow us to do this, please complete the Non-smoker declaration slip found on the front page of this letter, and return it to us. If we receive it within 3 months, we will refund any premiums that were unnecessarily charged.*

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[15] T5865.13-18; T5868.28-31 – T5869.1-4
[16] Exhibit 6.240 [AMP.6000.0305.0268]
[17] Exhibit 6.240 [AMP.6000.0305.0268]
[18] Exhibit 6.240 [AMP.6000.0305.0268]
[19] Exhibit 6.241 [AMP.6000.0305.0273 at .0282]
[20] Exhibit 6.241 [AMP.6000.0305.0273 at .0282]
[21] Exhibit 6.241 [AMP.6000.0305.0273 at .0284]

44 Then on page 11, smoker status was again raised with the direct request made of the FLS Member to disclose the following:[22]

Have you smoked any substance in the last 12 months? *Yes / No*

45 The cost of the premiums in the FLS account was then disclosed to the FLS Member on his annual statements each year[23] and the FLS Member had the ability to declare his smoker status at any time.

46 As the FLS Member did not return the non-smoker declaration either at the time of the welcome letter or otherwise, he was placed in a category which included smokers and non-smokers and charged premium rates accordingly. It was not assumed for the purposes of the applicable rate that the FLS Member smoked. The member simply did not take the necessary steps himself to declare that he was a non-smoker so as to have a specific "non-smoker" rate applied. He was in a category of insureds that included both.

47 Based upon this evidence, there is nothing inadequate or ambiguous in respect of the substance of the notification to the FLS Member. The notification makes clear that the FLS Member had been defaulted to a particular insurance rate as he had not declared his smoker status but he was also informed that such premiums could be reduced by providing the non-smoker declaration. This was twice communicated expressly to the FLS Member within this correspondence, with a third question being asked directly of the FLS Member relating to his smoker status. The communication was made as at the time of delinking as it was assumed by AMP that it is at this time that a member's superannuation arrangements are most pressing.[24] Such an assumption is reasonable.

48 Indeed, the FLS Member himself did not raise an issue as to the sufficiency of the substance of the notification and nor did the Superannuation Complaints Tribunal (**SCT**) make any adverse findings in this respect – rather, the FLS Member's complaint was that he was not informed of the ability to declare that he was a non-smoker as *"he did not recall receiving the letter"*.[25] While this was the initial evidence of the FLS Member, it seems that his evidence subsequently changed to a positive denial of receipt based on his non-recall.[26]

49 The SCT held that it was not possible for it to make a finding of whether or not the FLS Member received the correspondence as, according to it, *"there was no evidence to refute the FLS Member's assertion that he did not receive it*" (the **No Receipt Finding**).[27]

50 Based upon the No Receipt Finding and the fact that the non-smoker declaration did not otherwise appear in the annual statements in 2005, the SCT held that it

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[22] Exhibit 6.241 [AMP.6000.0305.0273 at .0292]
[23] Exhibit 6.241 [AMP.6000.0305.0273 at .0294-0347]
[24] T5867.2-4
[25] Exhibit 6.244 [RCD.0021.0022.0001 at [14]]
[26] Exhibit 6.244 [RCD.0021.0022.0001 at [35]]
[27] Exhibit 6.244 [RCD.0021.0022.0001 at [36]]

was not fair and reasonable for the Trustee to refuse to refund the FLS Member's account.

51 As illustrated above, the No Receipt Finding was an essential element in the ultimate decision of the SCT to require AMP to refund premiums to this particular member.

52 While respecting the decision of the SCT in this case and abiding by its outcome, in other cases before the SCT involving different circumstances, the SCT has determined that adequate disclosure to members had been provided, multiple communications to members were not required and the trustees can expect members to read communication materials that they issue to them.[28] In particular, the SCT has applied, in finding that members' communications were in fact sent to them, the judicial standard referred to by the Court of Appeal in *Marsh v CGU Insurance Ltd* in which it was held that:[29]

> *Evidence of the general course of business or of an office system is admissible in order to show what would ordinarily be done in a particular set of circumstances. From this, a court may be entitled to infer that what would ordinarily have been done, was done on this occasion, it being more probable than not that the general course will be followed in the particular case: see* Martin v Osborne *(1936) 55 CLR 367 at 375–376 per Dixon J, at 386 per Evatt J;* Connor v Blacktown District Hospital *[1971] 1 NSWLR 713 at 721 per Asprey JA;* Olga Investments Pty Ltd v Citipower Ltd *[1998] 3 VR 485 at 486–7 per Ormiston JA, at 497–498 per Charles JA.*

53 With that said, ASL and NMS acknowledge that a process that informs and then reminds a member of their ability to declare their smoker status on every annual statement is optimal. It is for this reason that the process for FLS products was amended prior to the 2014 annual statements (and prior to the handing down of the SCT decision) such that a member is reminded that they can inform AMP of their smoker status in every annual statement and are also informed of the impact that such disclosure can have on their premiums.[30] That AMP has changed its processes is not a concession that the FLS Member was not adequately informed – rather it is indicative of AMP's focus on the member experience and its attempts to continually refine and improve its processes.

Consequently AMP rejects the open findings

54 In light of the above and with direct reference to the open findings:

(a) AMP rejects a finding that it deducted premiums calculated on a statistically inappropriate basis. Like all insurance premiums, AMP

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[28] T5881.2-4; Review Determination and Reasons for Determination No. D16-17/160 dated 4 May 2017 [AMP.6000.0313.0001]
[29] *Marsh v CGU Insurance Ltd t/as Commercial Union Insurance* [2004] NTCA 1 at [8]
[30] T5867.6-7

calculates its premiums based on an actuarial assessment of the lives in the relevant pool;

(b) AMP rejects a finding that it defaults delinking members to a "smoker" rate. There is no evidence to support that AMP assumes that members who have not declared their smoker status are smokers. Members who do not declare their smoker status are not and have not been charged smoker premium rates. Consequently, members who do not declare their smoker status are not defaulted to a rate which is "statistically inappropriate" for them. As stated, the rate that is ultimately charged is based upon the risk associated with that particular risk pool and is determined after an actuarial assessment;

(c) at all times in respect of the FLS product, AMP has provided adequate notification in respect of the premiums which apply and the ability of a member to declare their smoker status. From 2014, members are reminded that they can inform AMP as to their smoker status at any time in every annual statement; and

(d) while systems related to reminding customers of their ability to declare their smoking status were refined and improved in 2014, the process prior to that time was not below community standards because that process still notified the member at a time when his or her superannuation arrangements were most likely to be at the forefront of their mind. The implementation of such refinements is not a concession that the previous system was in error, rather it is indicative of the culture of improvement that AMP has created and continues to strive to maintain for the benefit of its members.

AMP PROPERLY MANAGES MEMBER'S ACCOUNTS AFTER DEATH

Open findings:

(a) It is open to the Royal Commission to find that AMP has engaged in misconduct by:

(i) continuing to deduct insurance premiums from deceased members accounts since at least 2016. That conduct may amount to a breach of section 912A(1)(c) of the Corporations Act *2001 (Cth) (**Corporations Act**); sections 29VC and 52(2)(b) of the SIS Act;*

(ii) failing to notify APRA and ASIC of the continued deductions of premiums from the deceased member accounts from at least 2016, except to the extent notified on 26 June 2018, the Trustee may have breached section 912D(1)(b) of the Corporations Act; section 29JA(1) of the SIS Act; and

(iii) failing to ensure that there were adequate systems in place to cease deducting premiums from deceased members accounts.

That conduct may amount to a breach of section 912A(1)(a) of the Corporations Act; sections 52(2)(b) and (c) of the SIS Act.

(b) *It is open to the Royal Commission to find that AMP may have engaged in conduct falling below community standards and expectations by failing to stop the deduction of premiums from deceased members accounts in a timely way.*

(c) *It is open to the Royal Commission to find that the causes of the misconduct and the conduct falling below community standards and expectations included AMPs culture and systems which failed … to prevent the continued deduction of premiums from deceased members' accounts.*

55 These findings are also not open on the evidence. AMP strenuously objects to the proposed open findings and submits that the propositions put forward by Counsel Assisting are not available.

AMP's approach on premium payments following the death of a member is appropriate

56 AMP's policy at all times has been that the liability to pay premiums on a life insurance policy ceases on the date of death.[31]

57 AMP currently implements this policy as follows (***Current Process***):

(a) AMP ensures premiums cease to be deducted as from the date of the initial and informal notification of death;

(b) the deceased member's investment is switched to cash where applicable to ensure that their superannuation account is not significantly impacted by market fluctuations; and

(c) AMP reverses any premiums, which were paid after the date of death and prior to AMP being notified of the death, to the superannuation account before any amount is made available to the beneficiary. The reversal process to effect this payment results in the member's account being put in a position as though the premium payments after the date of death had not occurred, and accounts for the time value of money (ie – any investment gains or losses or interest, as applicable).

58 AMP is, of course, reliant upon a member's estate contacting it to inform it of a member's death. Often, this notification process is not instantaneous and it may be that AMP is unaware of a member's death for some time. It is for this reason alone that premiums are deducted after the date of a member's death, and a refund process is required. This is inevitable and the process followed is appropriate.

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[31] T5891.13-14

AMP's previous approach to managing premium payments and refunds was also appropriate

59 The position prior to July 2018, in respect of certain corporate superannuation products only, had been to cease the deduction of premiums only on finalisation of the claim (***Previous Process***).

60 Importantly, the Previous Process still involved any premiums, which had been deducted in the period between the date of death and the date of finalisation of the claim, being reversed to the superannuation account, prior to the funds being paid to the beneficiary by means of the reversal process described above. It was simply a larger number of transactions.

61 The Current Process and the Previous Process are compliant with the Corporations Act and the SIS Act and reflect the proper conduct of a prudent trustee.[32]

62 These processes were not discussed in detail in the written statements of Mr Sainsbury, which have been provided to the Royal Commission, given that no questions were directed to either process.

AMP's breach report to ASIC and APRA dated 26 June 2018 related to a specific error

63 The questions posed to Mr Sainsbury were in respect of a breach report that was provided to ASIC and APRA on 26 June 2018 (**June Breach Report**).

64 The June Breach Report addressed a failure to properly calculate and pay certain premium refunds. It stated:[33]

> *ASL as the issuer of superannuation products, and* [AMP Life] *as the administrator of the superannuation products including the administration of life insurance at a member level … have identified instances where insurance premiums charged to the member's superannuation account after the member's death, were either not refunded, or the amount of the refund was not correct*. [Emphasis added]

65 The substantive issues raised in the June Breach Report occurred as a consequence of process and human error.[34] The report did not raise any issue in respect of AMP's policy or the Previous Process as a whole.

66 On discovery of the issue, the June Breach Report was provided to ASIC within the prescribed 10 business days as provided by section 29JA(1) of the SIS Act.

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[32] See the Royal Commissioner's observation at T-6493.39-40.
[33] Exhibit PJS-2 to the Sainsbury Statement 6-69 (**Exhibit PJS-2**), Tab 5 [AMP.6000.0281.0046]
[34] Sainsbury Statement 6-69 at [12]-[14]

ASIC and APRA continue to be updated as to the issue as AMP seeks to remedy it.[35]

67 At the same time, AMP has continued to investigate the errors and will remediate affected members. The investigations are due to be finalised in approximately one to two months.[36]

The questions raised in 2016 within AMP related to a separate aspect of the Previous Process

68 In 2016, AMP considered the operation of one specific product administration system which followed the Previous Process. An officer at AMP involved in a particular claim had queried whether AMP should stop deducting premiums on the informal notification of a member's death, rather than upon finalisation of the claim (once verification of the death had been received).[37]

69 The officer's query was not a suggestion that refunds were not being properly processed in 2016 or that any member, or their estate, was being underpaid. At the time, AMP considered the Previous Process and verified that when it was followed, all refunds of premiums were being properly processed. For example, on 8 June 2016 at 4:49 pm, the Team Leader of Corporate Super Operations wrote:[38]

> *The current process is to charge until the claim is processed which triggers a refund.*

70 As it was understood that the refunds were being processed correctly, for the reasons set out at paragraph 61 above, there was no reportable breach. The query did identify an area where AMP had the opportunity of improving its processes, which it did by introducing the Current Process.

71 The fact that the issues raised in 2016 were separate and distinct from the June Breach Report is evident from Mr Sainsbury's statement[39] and oral evidence[40] as well as from the June Breach Report itself.

Consequently AMP rejects the open findings

72 In light of the above and with direct reference to the open findings:

(a) AMP accepts that it unintentionally breached the SIS Act and the Corporations Act in the manner properly reported to the regulators in the June Breach Report;

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[35] Exhibit PJS-2, Tab 7 to Sainsbury Statement 6-69 [AMP.6000.0281.0049]
[36] T5897.38
[37] Exhibit 6.246 [AMP.6000.0302.0006]
[38] Exhibit 6.246 [AMP.6000.0302.0006]. See also email dated 6 July 2016 at 4:11 pm within Exhibit 6.246.
[39] Sainsbury Statement 6-69 at [12]-[14]
[40] T5891.6-10; T5891.33-34

(b) AMP has not otherwise engaged in misconduct by virtue of the Previous Process. The fact that AMP chose to stop deducting premiums at the time of paying a claim for death does not amount to a breach of section 912A(1)(c) of the Corporations Act or sections 29VC and 52(2)(b) of the SIS Act;

(c) it is not open to the Royal Commission to find that AMP "*failed to notify APRA and ASIC of continued deductions of premiums from deceased member's accounts since at least 2016*". As set out above, there was no reportable breach identified at that time. This means no breach either of section 912D(1)(b) of the Corporations Act or section 29JA(1) of the SIS Act can arise. The only reportable breach was in respect of certain refund calculations, which was raised in April 2018 and reported within the required timeframe; and

(d) it is not open to the Royal Commission to find that AMP failed to ensure that there were adequate systems in place to cease deducting premiums from deceased members' accounts. It is also not open to the Royal Commission to find that AMP may have engaged in conduct falling below community standards and expectations by failing to stop the deduction of premiums from deceased members' accounts in a timely way (either by virtue of the systems, culture or otherwise). This is because:

(i) AMP has at all times stopped the deduction of premiums in a timely way, that is, either on informal notification or prior to any claim being paid; and

(ii) there is no evidence before this Royal Commission that supports a finding that the premiums did not stop when they were meant to stop, as discussed above. This has never been an issue and nothing in Mr Sainsbury's statements or in the June Breach Report issued to ASIC and APRA would indicate otherwise.[41]

AMP PROPERLY MANAGES PERMANENT INCAPACITY BENEFITS IN MYSUPER PRODUCTS

Open findings:

(a) It is open to the Royal Commission to find that AMP has engaged in misconduct by not ensuring that at least one of its MySuper members were provided with Permanent incapacity benefits on an opt-out basis. That conduct may amount to a breach of section 68AA(1)(a) of the SIS Act.

[41] Sainsbury Statement 6-69 at [14] gives evidence that the June breach report related to (1) the process for retail superannuation products operating incorrectly such that although premiums ceased to be deducted at the appropriate time, the premiums refunded were miscalculated, (2) a process error which created errors in the calculation of the refund, and (3) human error which created errors again in the calculation of refunds.

(b) *It is open to the Royal Commission to find that AMP may have engaged in conduct falling below community standards and expectations by refusing to provide insurance cover to members who hold a MySuper product.*

(c) *It is open to the Royal Commission to find that the causes of the misconduct and the conduct falling below community standards and expectations included AMP's culture and systems.*

73 These findings are also not open on the evidence. AMP not only states that the open finding sought is simply not available to the Royal Commission, it positively asserts that the case study in question is an illustrative example of how AMP's dispute resolution processes entirely meet community standards and expectations.

The background to the case study before the Royal Commission

74 The member in question had been a member of a corporate superannuation plan as an employee. Critically, the corporate superannuation plan administered by ASL did not include group insurance cover and the employer had insurance in place for its employees outside of its AMP plan.[42]

75 When the member ceased his employment, he was transferred to FLS. This delinking was not to a MySuper product, as the transfer was prior to the MySuper regime being implemented (which occurred later on 1 January 2014).[43]

76 As no insurance coverage was provided to the member by virtue of the corporate superannuation plan, on delinking no insurance was identified consistent with the transfer rules that applied at the time.[44]

77 On delinking, a welcome call was made to the member advising him that he did not have insurance cover in place through his superannuation. Consistent with practice, he also received an information pack on the FLS policy and a standard choice form which would have also advised him that he did not have insurance cover in the FLS fund.[45] Additionally, subsequent annual statements indicated that the member did not have insurance coverage.

78 It is also clear from the evidence that the member had alternative arrangements with REST and NESS, which he subsequently rolled over into FLS in December 2015.[46]

79 On 1 January 2014, the member was transferred to MySuper with new contributions paid into the FLS MySuper option on 1 January 2014, in accordance with the MySuper regulatory requirements that came into effect on that date.

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[42] T5894.5-10
[43] T5894.14-15
[44] T5894.12
[45] T5895.25-32
[46] Exhibit 6.247 [AMP.6000.0287.0182]

Section 68AA of the SIS Act has not been contravened

80 AMP contends that this transfer of the member to the FLS MySuper product without insurance was in consideration of, and consistent with, section 68AA of the SIS Act.

81 While section 68AA states that a superannuation trustee must ensure that the fund provides permanent incapacity benefit and death benefit to each MySuper member (section 68AA(1) of the SIS Act), the trustee also has the ability to determine reasonable conditions as to which the provision of permanent incapacity benefits or death benefits will be subject (section 68AA(3)). Consequently, the trustee is not required under section 68AA to provide permanent incapacity benefits or death benefits if the conditions that the trustee determines are essential to the operation of the fund are not met by the member (section 68AA(2)).

82 Conditions determined by the trustee are taken to be reasonable if they are the same as the terms and conditions of the policy of insurance taken out which provides the benefit (section 68AA(4)). It is clear that reasonable conditions may include eligibility criteria and the criteria for any entitlement to the permanent incapacity benefit.[47]

83 In the case study before the Royal Commission, AMP sought internal and external advice on whether the member was one to which the exception in section 68AA(2) applied and benefits were not available to the member, following AMP's internal incident review committee considering that a breach may have occurred, and AMP's notification to APRA of that potential breach on 5 June 2018.

84 That advice, which was subsequently communicated to APRA, was that AMP's conduct was not in contravention of section 68AA.

85 In oral closing submissions, reference was made by Counsel Assisting to AMP's ongoing enquiry as to another 1,600 MySuper members. As has been clear from all of the evidence produced by AMP to the Royal Commission, when any potential issue has come to AMP's attention, either through its own internal processes or its review of the market, it has undertaken its own immediate enquiry to ensure that its processes comply with both its statutory obligations and community expectations.

86 What is known so far is that the investigations conducted by AMP have confirmed that other members initially identified as not having had default insurance provided to them at the time of the MySuper transition were an application of the business rules which are otherwise consistent with section 68AA of the SIS Act[48] (i.e. – not issues of error). Notwithstanding, additional investigations are being

[47] Revised Explanatory Memorandum to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 at [2.17] – [2.18]
[48] Exhibit 6.249 [AMP.6000.0288.1331]

conducted to provide further assurance to the regulators that the business rules have been applied correctly.[49]

87 AMP submits that it is clear that the case study in question does not represent a breach of section 68AA of the SIS Act.

The Customer Advocate's resolution of the complaint was appropriate and adequate

88 In closing submissions, Counsel assisting the Royal Commission made reference to the raising of this complaint and that a payment was *"ultimately made to the member"*. Those comments are not truly reflective of the actions taken by AMP in dealing with this issue.

89 In or around late 2017, the member was diagnosed with a terminal illness.[50]

90 On 6 December 2017, a complaint was made on behalf of the member to the Chief Executive Officer of AMP that insurance had not been provided despite the member being a MySuper member (the **Complaint**).[51]

91 **Within two days of the Complaint**, the Office of the AMP Customer Advocate was making detailed enquiries and conducting an investigation into it.[52]

92 The role of the AMP Customer Advocate is to provide an operationally independent and final review to ensure that members' interests have been looked after.[53]

93 Within 10 days, the member was offered, as a good will gesture, an interim payment of $5,000 taking into account the member's personal circumstances and the fact that the investigation was continuing and would be delayed because of the Christmas and New Year period.

94 By January 2018, the AMP Customer Advocate had recommended that the Member be extended default insurance cover by the trustee as a MySuper member (even though there was no legal entitlement to receive it) in addition to a payment of $100,000 as an ex-gratia lump sum payment in relation to other matters investigated by the Customer Advocate in relation to the Complaint.[54]

95 Due to the difficult personal circumstances, the decision of the AMP Customer Advocate was expedited and a resolution was achieved within approximately one month of the complaint first being made to AMP. The determination made by the AMP Customer Advocate was prior to investigations being carried out by the trustee into the business processes and rules as they were in place at 2014 and

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[49] Exhibit 6.249 [AMP.6000.0288.1331]; T5897.17-38
[50] Exhibit 6.247 [AMP.6000.0287.0182]
[51] Exhibit 6.247 [AMP.6000.0287.0182]
[52] Exhibit 6.248 [AMP.6000.0287.0165]
[53] T5893.36-41
[54] T5895.42-46

legal advice being obtained by the trustee about the operation of section 68AA of the SIS Act in that context.

96 The manner in which the Complaint was handled is evidence of the effectiveness of the AMP Customer Advocate, AMP's incident management process and of a culture and system which promotes the best interests of members, as best summarised by Mr Sainsbury's own evidence to the Royal Commission:[55]

> *The Group believes the outcome that was delivered for the … member and his family was – was a very good outcome in the context of granting default cover and also granting an ex gratia payment for the amount of insurance when he rolled in other superannuation into AMP… AMP is 100 per cent behind the outcome for that member.*

Consequently AMP rejects the open findings

97 In light of the above and with direct reference to the open findings:

(a) AMP does not accept that it has engaged in misconduct or conduct in breach of section 68AA(1)(a) of the SIS Act as, when properly applied, section 68AA does not result in a blanket need for all MySuper customers to have permanent incapacity cover where there are business rules and processes in place that may result in a member not receiving this cover. This is entirely appropriate and consistent with the expectations of the community; and

(b) AMP does not accept that this purported misconduct, which is denied, shows a failing of AMP's culture and systems when, in fact, AMP's culture and systems led to a beneficial outcome for the member the subject of the case study, beyond what would be expected to have occurred by the community.

1 October 2018

[55] T5895.42-46; T5896.4-5