

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

### Allianz Australia Limited

#### WRITTEN SUBMISSIONS ON CASE STUDY – RUBRIC 6 - 63

##### Executive summary

- 1 Before the conclusion of the Round 6 Hearings, counsel assisting the Commission (**Counsel Assisting**) submitted that it was open to the Commissioner to make findings against Allianz in respect of:
  - (a) misconduct in relation to: (i) misleading content on its website; (ii) failure to report significant breaches of s.912D of the *Corporations Act 2001* (Cth) (**CA**) to ASIC; and (iii) failure to comply with paragraph 44 of Prudential Standard CPS 220 (**CPS 220**) (being the version dated 1 January 2015);
  - (b) conduct falling below community standards and expectations in: (i) failing to remove website pages while it investigated the extent of the misleading representations in them and determined how to fix them; (ii) not being frank in its dealings with ASIC; and (iii) seeking to manipulate the findings of an independent report commissioned by Allianz for the purpose of satisfying the requirements of CPS 220; and
  - (c) the causes of the misconduct and conduct falling below community standards and expectations.
- 2 For the reasons that follow, Allianz:
  - (a) accepts that the first instance of misconduct is open on the evidence, but submits that the evidence supports only the limited findings in relation to the second and third instances explained in paragraphs 7 to 25 below;
  - (b) accepts that the first instance of conduct falling below community standards and expectations is open on the evidence, but submits that the evidence does not support the second and third findings suggested by Counsel Assisting; and
  - (c) accepts that certain conclusions as to the causes of the conduct (discussed below) are open for the Commissioner to reach, but submits that the evidence does not support the more wide ranging or wholesale findings (including in respect of culture) in the terms or manner submitted by Counsel Assisting, particularly as to the present state of Allianz's compliance culture.

##### Misconduct

###### *Misleading content on website*

- 3 Counsel Assisting submitted that:

*“... it is open to find that Allianz may have engaged in conduct that was misleading or deceptive and therefore amounted to misconduct in respect of each of the 39 representations in relation to travel insurance, described in the table in paragraph 86 of the [First Winter Statement]; each of the 14 representations in relation to home insurance described in the table in the annexure to that statement; each of the four representations in relation to motor vehicle insurance described in that annexure; each of the three*

*representations in relation to life insurance described in that annexure; and the representation in relation to boat insurance described in that annexure.”<sup>1</sup>*

- 4 Allianz accepts this to be a finding that is open upon the evidence, although it does note that the non-travel insurance related representations were remedied in 2016.

#### *Section 912D of the Corporations Act*

- 5 Counsel Assisting submitted that Allianz failed to comply with s.912D of the CA in the following respects:

*“... by failing to report any of this misleading and deceptive conduct to ASIC as a significant breach within 10 business days”*

*“by failing to take into account each of the matters set out in section 912D(1)(b) of the Corporations Act when deciding in May 2016 not to report the misleading and deceptive conduct to ASIC as a significant breach”*

*“by failing to report at least three of the other matters identified in the compliance update, dated July 2018, which is exhibit 6.299 to ASIC as significant breaches within 10 business days”*

*“until the introduction of the breach review committee in May 2018, failing to have in place an adequate system to assess whether compliance incidents should be reported to ASIC as significant breaches”.<sup>2</sup>*

- 6 Allianz accepts that a finding of a breach of s.912D of the CA is open on the evidence on the basis of Allianz’s failure to report to ASIC misleading content on its website within 10 business days as required by s.912D(1B). In doing so, Allianz does not accept that each and every individual representation constituted a “significant” breach for the purposes of s.912D(1)(b) and thus was reportable pursuant to s.912D(1B). Allianz accepts, however, that the volume of representations and the length of time it took to remedy them gave rise to a “significant” breach that should have been reported pursuant to s.912D(1B).
- 7 Allianz does not accept that the evidence before the Commission supports findings of breaches of s.912D in relation to the other instances identified by Counsel Assisting.
- 8 *First*, in respect of the proposition that Allianz failed to take into account each of the matters set out in s.912D(1)(b) of the CA in May 2016:
- (a) the evidence does not suggest that the matters set out in s.912D(1)(b) were simply ignored at the ARICO meeting on 6 May 2016 described at paragraph 92 of the First Winter Statement;
  - (b) the evidence before the Commission is that:
    - (i) the question of whether or not the website issue was reportable pursuant to s.912D was in fact considered at the ARICO meeting on 6 May 2016;
    - (ii) Allianz had a process regarding reportability in place at the relevant time and it was followed on 6 May 2016; and
  - (c) it follows that the more plausible inference is that the participants at the ARICO meeting on 6 May 2016 *would* have considered whether or not to report the matter to ASIC by reference to the mandated factors set out in s.912D(1)(b).

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<sup>1</sup> Transcript 21 September 2018 – p.6496.40 to p.6497.5.

<sup>2</sup> Transcript 21 September 2018 – p.6497.5 to p.6497.15.

- 9 Mr Winter conceded in his oral evidence that the participants at the ARICO meeting on 6 May 2016 reached the wrong decision in determining not to report the matter to ASIC.<sup>3</sup> Mr Winter also said that, although he did not recall the precise details of the meeting,<sup>4</sup> Allianz did have in place a process for reviewing reportability, and it was followed.<sup>5</sup> It is submitted that Mr Winter was a truthful witness who candidly and readily accepted failings on the part of Allianz. It is submitted that his evidence on this topic should be accepted.
- 10 The document at tab 11 to the First Winter Statement is also relevant to this topic. Mr Winter clarified (by way of the Second Winter Statement<sup>6</sup>) that this document was prepared for Allianz's General Counsel, Matthew Kaley, as notes for the ARICO meeting on 6 May 2018, and that Mr Kaley had stated in correspondence that he considered that he would have presented to the ARICO meeting on the topic of that document – being, among other things, whether or not the website issue was reportable to ASIC pursuant to s.912D. The evidence in the Second Winter Statement was not challenged by Counsel Assisting.
- 11 Accordingly, Allianz submits that the Commission should not find that Allianz breached s.912D of the CA by failing to consider the relevant mandated factors in s.912D(1)(b) at the ARICO meeting on 6 May 2016 because that would involve finding that:
- (a) the process Allianz had in place for considering reportability pursuant to s.912D omitted any consideration of the mandated factors set out in s.912D(1)(b), or that in this instance, that process was not followed (both conclusions being inconsistent with Mr Winter's evidence); and
  - (b) Allianz's General Counsel, although apparently cognisant of the requirement to report to ASIC pursuant to s.912D of the CA, was either ignorant of the mandated factors set out in s.912D(1)(b) or chose to ignore them in this case (being inferences not supported by the documentary evidence as explained in the Second Winter Statement).
- 12 Allianz submits that the findings the Commissioner should make on the evidence are that:
- (a) the mandated factors in s.912D(1)(b) *were* considered at the ARICO meeting on 6 May 2016 as part of the General Counsel speaking to the notes that had been prepared;
  - (b) nevertheless, the wrong decision was reached not to report the matter to ASIC; and
  - (c) Allianz's record keeping in respect of this decision was poor, which was likely explained in part by the fact that the decision had been reached not to report – i.e. it is possible that participants considered the matter sufficiently dealt with once that decision had been made.
- 13 *Second*, for the reasons set out in paragraphs 14 to 19 below, Allianz submits that Ms Callahan was mistaken in accepting in her oral evidence<sup>7</sup> that Allianz breached s.912D by not reporting to ASIC within 10 business days the three compliance incidents identified in Exhibit 6.299 with an asterisk.
- 14 Allianz did, in fact, notify ASIC of each of the incidents within ten business days of determining that they constituted a significant breach at the relevant Breach Review Committee.
- 15 The three relevant compliance incidents are described in Exhibit 6.299 as:
- (a) IBR 2486 – 'Alive' – Terrorism Levy charged on Commercial Motor Risk (**2486**);

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<sup>3</sup> Transcript 17 September 2018 – p.5940.35.

<sup>4</sup> Transcript 17 September 2018 – p.5939.5 to p.5838.35.

<sup>5</sup> Transcript 17 September 2018 – p.5940.25.

<sup>6</sup> See paragraphs 3(b) and 5 in particular.

<sup>7</sup> Transcript 18 September 2018 – p.6073.15 to p.6074.10.

- (b) IBR 3059 – FI Partner Websites linking to incorrect PDS (**3059**); and
  - (c) IBR 3134 – Bank Australia – Continuous Credit Insurance (**3134**).
- 16 Incident 2486 was considered at a Breach Review Committee meeting on 16 May 2018, the minutes of which are available to the Commission, but which have not yet been tendered into evidence.<sup>8</sup> Those minutes record the decision to notify ASIC of the breach.
- 17 Incidents 3059 and 3134 were considered at a Breach Review Committee meeting on 21 May 2018 the minutes of which appear at tab 16 to the First Winter Statement. Those minutes record the decision to notify ASIC of the breaches.<sup>9</sup>
- 18 Incident 2486 was notified to ASIC by way of letter dated 30 May 2018, which is available to the Commission, but which has not yet been tendered into evidence.<sup>10</sup>
- 19 Incidents 3059 and 3134 were notified to ASIC by way of separate letters dated 4 June 2018, which are available to the Commission, but which have not yet been tendered into evidence.<sup>11</sup>
- 20 *Third*, Allianz submits that the evidence before the Commission does not support any general finding that until May 2018 (when the Breach Review Committee process was implemented), Allianz failed to have in place an adequate system to assess whether compliance incidents should be reported to ASIC as significant breaches.
- 21 Much of Ms Callahan’s oral evidence addressed this topic.<sup>12</sup> It is submitted that she was a truthful witness who did her best to assist the Commission and Counsel Assisting and made concessions fairly and readily when appropriate.<sup>13</sup> It is also noted that Ms Callahan took on her present role in December 2017 and that role involved identifying deficiencies in, and implementing change of, Allianz’s compliance systems. Failings in Allianz’s compliance systems before she became Chief Risk Officer did not reflect upon her personally. Nevertheless, Ms Callahan was resolute in not accepting that Allianz’s prior system<sup>14</sup> was simply inadequate.<sup>15</sup> The following emerged from the relevant passages of her oral evidence:
- (a) while Allianz’s systems prior to May 2018 were not “modern”<sup>16</sup> and required updating, they were adequate to meet Allianz’s obligations under s.912D;<sup>17</sup>
  - (b) Ms Callahan had identified many instances where those systems had operated successfully;<sup>18</sup>
  - (c) but the systems were not always adhered to in a way that ensured compliance with s.912D in every case.<sup>19</sup>

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<sup>8</sup> DTT.0001.0004.0026.

<sup>9</sup> ALZ.0001.0071.8620 at ALZ.0001.0071.8624 and ALZ.0001.0071.8626.

<sup>10</sup> ALZ.0001.0089.0164.

<sup>11</sup> ALZ.0001.0071.9210 and ALZ.0001.0089.0335 respectively.

<sup>12</sup> Transcript 18 September 2018 – p.6071.15 to 6072.35.

<sup>13</sup> For example, she made the concession regarding paragraph 44 of CPS 220 without argument or hesitation: Transcript 18 September 2018 – p. 6076.10.

<sup>14</sup> Described in Ms Callahan’s earlier statement, which is Exhibit 6.321 at paragraphs 24 and 25.

<sup>15</sup> Transcript 18 September 2018 – p.6072.5.

<sup>16</sup> Transcript 18 September 2018 – p.6072.25 – p.6072.30.

<sup>17</sup> Transcript 18 September 2018 – p.6072.20.

<sup>18</sup> Transcript 18 September 2018 – p.6071.20.

<sup>19</sup> Transcript 18 September 2018 – p.6072.35.

- 22 In those circumstances, Allianz respectfully submits that evidence before the Commission does not support a finding in the terms articulated by Counsel Assisting.

#### *Prudential Standard CPS 220*

- 23 Counsel Assisting submitted that Allianz may have failed to comply with the requirement set out in paragraph 44 of Prudential Standard CPS 220 as in force in 2015:
- “... that Allianz have a designated compliance function that assists senior management in effectively managing compliance risks and is adequately staffed by appropriately trained and competent persons who have sufficient authority to perform their role effectively.”<sup>20</sup>*
- 24 In her oral evidence, Ms Callahan accepted that, based on her and Mr Winter’s evidence, Allianz had failed to meet paragraph 44 of this standard<sup>21</sup> prior to the recent changes implemented by Allianz. Ms Callahan made this concession notwithstanding that EY had in November 2017 ultimately assessed that Allianz’s overall approach to compliance was “appropriate”,<sup>22</sup> but in the context of both EY and her having identified the need for additional resourcing,<sup>23</sup> which had only recently been addressed in full.
- 25 Further, Ms Callahan also relevantly gave evidence<sup>24</sup> of Allianz’s Compliance Transformation Project, which she described as a significant body of work aimed at, among other things, more adequately resourcing Allianz’s compliance function so as to address the prior state of affairs. Further references to Allianz’s Compliance Transformation Project are found later in these submissions. Having regard to that, Allianz submits that it would be inappropriate for any finding to be made in respect of paragraph 44 of CPS 220 other than as a matter of history.

### **Conduct falling below community standards and expectations**

#### *Failure to remove pages while investigating*

- 26 Counsel Assisting submitted that Allianz engaged in conduct falling below community standards and expectations by:
- “... not taking steps to remove the relevant pages of its website from public view while it investigated the extent of the misleading representations and determined how to fix them.”<sup>25</sup>*
- 27 Allianz accepts that failing to remove the relevant pages of its website from public view while it investigated and determined how to fix them was conduct that fell below community standards and expectations.
- 28 It does, however, wish to emphasise two related factors that Allianz suggests the Commission ought to take into account when evaluating the extent to which Allianz’s conduct fell below community expectations.
- 29 *First*, Mr Winter did, ultimately, cause the relevant pages of Allianz’s website to be taken down, based upon what he described as the length of time it had taken Allianz and AWP to correct the materials, and what he perceived to be a failure to act.<sup>26</sup> Allianz fully concedes this action was

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<sup>20</sup> Transcript 21 September 2018 – p.6497.15 to p.6497.25.

<sup>21</sup> Transcript 18 September 2018 – p.6076.10.

<sup>22</sup> Tab 14 to Callahan Statement on p.6 (ALZ.0001.0078.0075).

<sup>23</sup> Tab 14 to Callahan Statement on p.13 to p.14 (ALZ.0001.0078.0082 and 0083).

<sup>24</sup> Callahan Statement at paragraphs 71 to 81 and Transcript 18 September 2018 – p.6069.5 to p.6069.25.

<sup>25</sup> Transcript 21 September 2018 – p.6497.25.

<sup>26</sup> Transcript 17 September 2018 – p.5964.10 to p.5964.20.

substantially overdue, but it does involve a recognition of its past failings and an attempt to address them.

- 30 *Second*, as Mr Winter explained, Allianz<sup>27</sup> had in any event determined that for whatever period the relevant content was available to the public, it would 'honour the representation'. That is, Allianz would abide by the representations that may not have otherwise accorded with the terms of the relevant policies and provide any impacted customer with the "best cover" being the cover most favourable to them. It is accepted that this was not a complete response to the issue but it is submitted that it demonstrated a corporate determination to ensure that Allianz would not benefit from the misleading statements on the website.
- 31 Allianz submits that this approach to its website was reasonable in the circumstances and met community standards and expectations in that it was a pragmatic response to addressing the issue.

### *Dealings with ASIC*

- 32 Counsel Assisting submitted that it was open to the Commissioner to find that Allianz had not been "frank and open" in its dealings with ASIC in the following respects:

*"...by failing to inform ASIC of all of the similar breaches that had been identified"*

and

*"...having told ASIC on 12 June that the misleading and deceptive representations had first appeared on the website in December 2015, and having learned on 21 June that, in fact, many of the representations had first appeared in July 2012, failing to take any steps to correct its earlier representation until it provided a response to a compulsory notice on 7 September [2018]"<sup>28</sup>*

- 33 In order to be satisfied that Allianz failed to be frank and open in its dealings with ASIC, the Commission would necessarily have to view the two supposed omissions to inform ASIC of the identified matters as *deliberate* – the inescapable implication being that Allianz was deliberately hiding things from ASIC. That finding is not open on the evidence before the Commission.
- 34 *First*, in both its 12 June 2018<sup>29</sup> and 20 July 2018<sup>30</sup> letters to ASIC, Allianz referred to ongoing investigations into for how long the relevant content had been visible on the websites, such that on neither occasion was the December 2015 date given as the definitive point in time from which it appeared.
- 35 *Second*, in relation to the "similar breaches" which it is said Allianz failed to report, those responsible for breach reporting at Allianz, and in particular Ms Callahan, formed the view – when preparing the letter to ASIC of 12 June 2018 – that a "similar breach" would involve an incident where the website contained potentially misleading conduct,<sup>31</sup> and not just compliance incidents that were picked up when a word-search was run using the word "website" across Allianz's entire compliance incident register.<sup>32</sup>

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<sup>27</sup> Transcript 17 September 2018 – p.5967.15.

<sup>28</sup> Transcript 21 September 2018 – p.6497.30 to p.6497.35

<sup>29</sup> Exhibit 6.284.9 (ALZ.0001.0067.0059 at ALZ.0001.0067.0061) "Allianz is conducting further retrospective testing to verify that this date is correct for all content under review".

<sup>30</sup> Exhibit 6.284.11 (ALZ.0001.0071.9701 at ALZ.0001.0071.9702) investigating "length of time which the potentially misleading content was live on the Allianz direct webpages".

<sup>31</sup> Transcript 18 September 2018 – p.6000.10 to p.6000.15.

<sup>32</sup> Transcript 18 September 2018 – p.6001.30 to 6001.40.

- 36 That was a reasonable approach to adopt. The subject matter of the 12 June 2018 letter was not the medium through which the representations were made (the website), but rather the fact that the representations on the website were potentially misleading and deceptive and thus contrary to the law.<sup>33</sup>
- 37 More importantly, even if the Commission were to prefer the view that Allianz should have classed all compliance incidents that involved its website as similar,<sup>34</sup> it is submitted that it does not necessarily follow that Allianz's different interpretation constitutes evidence of a calculated strategy to deprive ASIC of information, which would be a necessary step in any finding of the type suggested.
- 38 One particular example of an incident that was not included as similar in the 12 June 2018 letter makes this point convincingly: in her oral evidence, Ms Callahan referred to an incident being a "link on a website going to the wrong PDS", which was "deemed not to be similar because... [it was not] deemed to be false and misleading".<sup>35</sup>
- 39 This is incident 3059 referred to above. That Allianz did not class this incident as similar, but did report it to ASIC separately, militates firmly against any finding of any attempt by Allianz to withhold material from ASIC, or to be less than frank and open.
- 40 *Third*, the failure to inform ASIC until 7 September 2018 that some of the misleading content may have been on the website since July 2012 and not December 2015 as first indicated, when considered properly in context also does not indicate any deliberate strategy to be less than frank and open with ASIC.
- 41 It is the case that the earlier date was revealed to ASIC in response to a compulsory notice issued on 31 August 2018 pursuant to s.912C(1) of the CA.<sup>36</sup> This is correct and was readily conceded.<sup>37</sup>
- 42 If it was to be suggested that the compulsory nature of the s.912C notice was either the *only* or even the *primary* reason that the change in dates from 2015 to 2012 was revealed to ASIC, then that ought to have been squarely put to Allianz's witness, for confirmation or denial either way. It was not.
- 43 In the circumstances, it is respectfully submitted that it is open to the Commission to have regard to the delay in informing ASIC, but it would not be fair to attach significance to the fact the information was provided to ASIC in response to a compulsory request.
- 44 Having regard then to that delay between 21 June 2018 and 7 September 2018, a number of relevant points emerge:
- (a) *first*, during the 56 business days that passed between these dates: the travel insurance section of the Allianz website had been shut down (other than the 'how to make a claim' section); AWP was rectifying its partners' websites; and Allianz had implemented the "best cover policy", so that there was no, or substantially no, customer detriment;
  - (b) *second*, during those 56 business days, Allianz was in the process of completing the following bodies of work in respect of this Commission;
    - (i) responding to eleven Notices to Produce, producing a total of 3,829 documents to the Commission;

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<sup>33</sup> See Ms Callahan's further explanation at Transcript 18 September 2018 – p.6000.15 to p.6000.20. She also gave evidence that "I was thinking more about disclosing than withholding" at p.6000.30.

<sup>34</sup> Transcript 18 September 2018 – p.6000.10.

<sup>35</sup> Transcript 18 September 2018 – p.6000.5.

<sup>36</sup> Transcript 21 September 2018 – p.6496.10.

<sup>37</sup> Transcript 17 September 2018 – p.5975.20.

- (ii) on 20 August 2018, Allianz provided the Commission with a draft of the First Winter Statement in response to Rubric 6-63 – Travel Insurance, which *included the reference to the earlier 2012 date* and was provided 11 days prior to receipt of the s.912C compulsory request;
  - (iii) on 24 August 2018 Allianz provided the Commission with the First Winter Statement in final form. Again, this *included the reference to the earlier 2012 date*, and was provided 7 days prior to receipt of the s.912C compulsory request;
  - (iv) providing a number of additional witness statements, namely the supplementary statement of David Krawitz in response to Rubric 4-03A (provided in final on 25 June 2018), the statements of Michael Winter and David Krawitz in response to Rubric 6-50 (provided in draft on 15 August 2018 and in final on 30 August 2018), and the statements of Michael Winter and Lori Callahan in response to Rubric 6-63 (provided in draft on 20 August 2018 and in final on 24 August 2018);
- (c) no material advantage flowed to Allianz by reason of it reporting the 2012 date on 7 September 2018 rather than at any earlier point in time.

45 With respect to the last point, Mr Winter gave evidence that Allianz was, at the time of his evidence, very close to meeting with ASIC to propose a remediation proposal for ASIC’s approval.<sup>38</sup> It is submitted that it would be unrealistic to infer that as part of that remediation proposal Allianz – having disclosed the earlier 2012 date to this Commission as early as 20 August 2018 – would not be intending to inform ASIC of the 2012 date, and that but for the request that arrived 11 days later on 31 August 2018 (compulsory or otherwise) it would not have done so.

46 Given all the above, it is respectfully submitted that a finding that Allianz has been less than frank and open with ASIC in the course of the dealings identified by Counsel Assisting is not open.

#### *Manipulation of report for the purposes of CPS 220*

47 Counsel Assisting submitted that it was open to the Commission to find that Allianz engaged in conduct falling below community standards and expectations by:

*“... seeking to manipulate the content of an independent report commissioned by Allianz for the purpose of satisfying the requirements of CPS220 and which Allianz intended to provide to APRA”<sup>39</sup>*

48 It is important to note that the report Counsel Assisting was here describing was *not* the report of Ernst & Young (**EY**) into the compliance function at Allianz that appears as tabs 14 (final form) and 15 (25 September 2017 draft) of the Callahan Statement. Nor was it the Indicative Outline report into the compliance implications of the five recently reported matters to ASIC by Deloitte Touche Tohmatsu (**Deloitte**) that appears at tab 23 of the Callahan Statement.<sup>40</sup> Each of these reports were commissioned by Allianz for its own purposes.

49 Rather the report being referred to is the report by EY on risk, which was commissioned pursuant to CPS 220.

50 Furthermore, however Allianz’s actions are characterised, the evidence is that the risk report by EY did not materially change as a result of them.<sup>41</sup> Counsel Assisting did not submit that it was open to find that Allianz submitted to APRA a report that was in fact “manipulated” by Allianz.

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<sup>38</sup> Transcript 17 September 2018 – p.5958.15 to p.5958.30.

<sup>39</sup> Transcript 21 September 2018 – p.6497.35 to p.6497.40

<sup>40</sup> Allianz addresses Counsel Assisting’s analysis of its reaction to these compliance reports in the “Conduct attributable to - causes” below.

<sup>41</sup> Transcript 18 September 2018 – p.6077.35 to p.6077.40 and p.6079.5.

- 51 Although not specifically identified, Counsel Assisting's submission appears to be based on two pieces of evidence, namely:
- (a) an email sent by Ms Karen Wong of Allianz to Ms Kathryn Scott-Mackenzie of Allianz on 29 September 2017 (**Wong Email**),<sup>42</sup> and
  - (b) an email sent by Mr James Brigham of EY apparently internally within EY on 6 October 2017 (**Brigham Email**).<sup>43</sup>
- 52 *First*, Ms Callahan was asked to offer an interpretation of those emails<sup>44</sup> in circumstances in which she was neither party to them and not involved in the events recorded in the emails. Her evidence in relation to those matters is of limited probative weight. Neither the authors (nor recipients) of the emails were called to give evidence.
- 53 Taking the Wong email first, and even bearing the above-noted limitation in mind, Ms Callahan's reaction was telling.<sup>45</sup> While she did accept that the email appeared to record an attempt by Ms Noelene Woof to convince EY to change one of the ratings,<sup>46</sup> she emphasised that she was not privy to the communications<sup>47</sup> and that the request for "a more balanced view" was open to something other than the pejorative concept of "manipulation".<sup>48</sup>
- 54 Indeed, even without the benefit of first hand evidence of what took place at the relevant meeting, it is submitted that the phrase used by Ms Wong to describe what EY were proposing to do, being "rewrite with a more balanced view" does not suggest "manipulation." It lends itself more towards notions of reconsideration, or even correction.
- 55 *Second*, with respect to the Brigham Email, it is submitted that the Commission ought to be particularly cautious about its probative weight. In addition to the reasons set out in paragraph 52 above, the Brigham Email appears to contain an 'off-hand' assessment of a historical meeting and description of Ms Woof's demeanour in two meetings that may or may not be fair. It would be unfair to Ms Woof to proceed on the basis that Mr Brigham's view is necessarily correct or that it was suggestive of improper "manipulation" of the EY report.
- 56 *Finally*, there is no basis to conclude that Allianz's input into the CPS 220 report, however minimal and however characterised, was in any way improper – either from the point of view of EY or APRA.
- 57 In this regard, it is understood that the Commission exercised its subpoena powers to compel EY to produce its working files. Nothing was put to either of Allianz's witnesses in the nature of a contemporaneous record by EY that its representatives considered Allianz's representatives were 'over stepping' any mark by improperly seeking to manipulate the CPS 220 report.<sup>49</sup>
- 58 Equally, the requirement under CPS 220 for APRA-regulated institutions to obtain a comprehensive review of their risk management framework by "operationally independent appropriately trained and

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<sup>42</sup> Exhibit 6.302.

<sup>43</sup> Exhibit 6.289.

<sup>44</sup> At Transcript 18 September 2018 – p.6038.35 to 6040.20 (Brigham Email) and p.6078.5 to p.6079.5 (Wong Email).

<sup>45</sup> Transcript 18 September 2018 – p.6078.20 to p.6079.5.

<sup>46</sup> Transcript 18 September 2018 – p.6079.5.

<sup>47</sup> Transcript 18 September 2018 – p.6078.20 to p.6078.25; p.6078.45.

<sup>48</sup> Transcript 18 September 2018 – p.6078.45 to p.6079.5.

<sup>49</sup> The closest was Exhibit 6.294, which was an internal EY email regarding the compliance (not risk) report, and it suggested that EY were becoming frustrated by resources and budget being eaten up by the feedback process, but gave no indication that anything Allianz's representatives were doing constituted an improper attempt to "manipulate".

competent persons” every three years,<sup>50</sup> includes no proscription of dealings between the institutions and such operationally independent persons in respect of the review. Indeed, at a practical level it would potentially hinder CPS 220 producing the most accurate assessment possible if an entity were not permitted to point out potential errors in draft reports for the authors to independently consider and alter if they considered appropriate.

59 The terms of EY’s engagement are entirely consistent with this position. EY’s report on risk pursuant to CPS 220 and its report on compliance were each performed pursuant to a Project Agreement<sup>51</sup> and EY’s Proposal for CPS 220 review and Compliance Framework review (**EY Proposal**).<sup>52</sup> The Project Agreement is available to the Commission,<sup>53</sup> but has not yet been tendered into evidence. The EY Proposal has not yet been tendered into evidence.

60 Each of these documents included a table of “work steps” that included input and feedback by Allianz prior to the finalisation of the reports and discussion of draft reports.<sup>54</sup> For example, the EY Proposal stated as follows:

4. Validation of outcomes	Week 8 - 12	<ul style="list-style-type: none"> <li>▶ Consolidate outcomes of the desktop review, interviews, walkthrough and sample testing to form independent findings and recommendations</li> <li>▶ Make comparisons with leading practices and APRA requirements</li> <li>▶ Discuss findings and recommendations to seek your feedback and to fine tune our conclusions</li> </ul>	<ul style="list-style-type: none"> <li>▶ Initial findings and recommendations</li> <li>▶ Initial CPS 220 industry assessment</li> <li>▶ Initial CF maturity assessment</li> </ul>
5. Reporting	Week 11 - 13	<ul style="list-style-type: none"> <li>▶ Upfront agreement of the report structure and reporting process to allow sufficient feedback opportunities and reduce surprises</li> <li>▶ Draft reports to be sent to allow opportunity for discussion and feedback from management</li> <li>▶ Finalisation of reports for submission to Allianz by 13 October 2017</li> </ul>	<ul style="list-style-type: none"> <li>▶ Draft report</li> <li>▶ Final report</li> </ul>

61 Furthermore, Allianz has now located emails confirming that the EY Proposal<sup>55</sup> was provided to APRA prior to EY’s preparation of the reports. These emails have not yet been tendered into evidence. APRA saw the above terms of EY’s engagement and there is nothing to suggest APRA was concerned about a process that allowed for feedback from Allianz’s management on the draft reports.

62 The fundamental requirement of CPS 220 is that the review be conducted by “operationally independent” persons and there are well-known accounting standards for independence when conducting such assurance tasks.<sup>56</sup> There is no basis to conclude that EY failed to meet those standards or that Allianz considered EY was susceptible to improper manipulation of its views.

<sup>50</sup> Set out at paragraphs 45 to 48 of Exhibit 6.301 (present CPS 220)

<sup>51</sup> Executed in counterparts by EY on 27 July 2017 and Allianz on 31 July 2017.

<sup>52</sup> Dated 17 March 2017.

<sup>53</sup> ALZ.0001.0097.0006 (Project Agreement) at ALZ.0001.0097.0011 (Attachment 1)

<sup>54</sup> See p.2 of Attachment 1 to the Project Agreement (ALZ.0001.0097.0011 at 0012) and p.12 of the EY Proposal, in each case work steps 4 and 5.

<sup>55</sup> Email from Chris Kind of APRA to Yvone Zhu of Allianz dated 24 July 2017 at 10:22 PM in which he refers to the content of the EY Proposal; also email from Yvonne Zhu of Allianz to Chris Kind of APRA dated 10 May 2017 at 6:16 PM stating that documents APRA had requested had been uploaded to APRA’s SecureDoc system and email from Karen Wong to Yvonne Zhu dated 10 May 2017 at 1:30 PM apparently listing the documents sought: last two documents are “Request for Proposal CPS2200.pdf” and “Allianz CPS 220 Comprehensive review proposal – Final.pdf

<sup>56</sup> See publically available examples such as: the Code of Ethics published by the Accounting Professional & Ethical Standards Board available at [https://www.apesb.org.au/uploads/standards/apesb\\_standards/standard1.pdf](https://www.apesb.org.au/uploads/standards/apesb_standards/standard1.pdf) at [291]; Auditing Standard ASA 102 Compliance with Ethical Requirements when Performing Audits, reviews and Other Assurance Engagements available at [https://www.auasb.gov.au/admin/file/content102/c3/ASA\\_102\\_Auditing\\_Standard\\_FRLI.pdf](https://www.auasb.gov.au/admin/file/content102/c3/ASA_102_Auditing_Standard_FRLI.pdf) at [6]; and Auditing Standard ASQC 1 –

## Conduct attributable to – causes

### *Processes for monitoring the content of Allianz’s website and those of its partners*

63 Counsel Assisting submitted that:<sup>57</sup>

“...Allianz had inadequate processes for monitoring the content of its own website and the websites of other companies that distributed its products.”

64 Allianz accepts this is a fair summation of one major cause for the misleading content being permitted to be placed upon the relevant websites, and for it staying there so long.

65 As Ms Callahan accepted in her oral evidence, Allianz accepts the recent findings of failings in respect of its Document Sign-Off Process (**DCSO**) made by its own Internal Audit team.<sup>58</sup> Allianz has embarked upon steps to address these failings, although it concedes that it is at the start of that process.<sup>59</sup>

### *Processes for monitoring and closing compliance incidents*

66 Counsel Assisting submitted that:<sup>60</sup>

“...for many years Allianz has had inadequate processes for monitoring and closing compliance incidents once they have been identified.”

67 Again, Allianz accepts this as a fair summation of one of the major causes for the misleading content being permitted to be placed upon the relevant websites, and for it staying there so long.

68 On this topic Ms Callahan gave evidence of some specific improvements that had *already* been implemented (as part of the Compliance Transformation Program) including that Risk and Compliance Officers were now required to have specific risk and compliance experience<sup>61</sup> and the significant changes to the incident and breach reporting process,<sup>62</sup> including as recently as this year.<sup>63</sup> As well as the very recent improvements to Allianz’s systems for monitoring remedial action in response to compliance breaches, including the implementation of the Incident Management Committee (now also being informed by the Breach Review Committee)<sup>64</sup> and the concept of an Accountable Business Owner.<sup>65</sup>

69 In the course of describing this cause, Counsel Assisting noted that Ms Callahan had conceded that Allianz was only at the beginning of addressing it. Allianz accepts that characterisation.<sup>66</sup>

### *Processes for monitoring AWP and other distributors*

70 Counsel Assisting also submitted that:<sup>67</sup>

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*Quality Control for Firms that Perform Audits and Review of Financial Reports and Other Financial Information, Other Assurance Engagements* available at [https://www.auasb.gov.au/admin/file/content102/c3/ASQC\\_%201\\_Compiled\\_2017.pdf](https://www.auasb.gov.au/admin/file/content102/c3/ASQC_%201_Compiled_2017.pdf) at [20] – [25].

<sup>57</sup> Transcript 21 September 2018 – p.6497.45.

<sup>58</sup> Transcript 18 September 2018 – p.6009.5 to p.6009.20; p.6010.25 to 6010.45.

<sup>59</sup> Transcript 18 September 2018 – p.6011.5.

<sup>60</sup> Transcript 21 September 2018 – p.6497.40.

<sup>61</sup> Transcript 18 September 2018 – p.6014.20 to p.6015.10.

<sup>62</sup> Transcript 18 September 2018 – p.6022.40 to p.6022.45.

<sup>63</sup> Transcript 18 September 2018 – p.6023.20 to p.6023.25.

<sup>64</sup> Transcript 18 September 2018 – p.6025.30 to p.6025.40.

<sup>65</sup> Transcript 18 September 2018 – p.6025.10 to p.6025.20.

<sup>66</sup> Transcript 21 September 2018 – p.6498.35 to p.6498.40.

<sup>67</sup> Transcript 21 September 2018 – p.6498.40.

“...until July this year, Allianz had inadequate oversight of AWP”

- 71 Ms Callahan accepted that until the most recent underwriting agreement was entered into with AWP in July 2018, Allianz had inadequate oversight of AWP.<sup>68</sup> Since July this year it has had in place adequate oversight of AWP,<sup>69</sup> which appeared to be accepted by Counsel Assisting.<sup>70</sup>
- 72 As part of Counsel Assisting’s description of this cause, reference was also made to compliance within AWP separately.<sup>71</sup> It is submitted that this is not to the point, and ought not to give rise to any findings regarding AWP specifically, since:
- (a) the Commission did not hear in any material detail separate evidence of compliance within AWP;
  - (b) Mr Winter ultimately accepted that it was Allianz’s responsibility to remedy the misleading content on the relevant websites;<sup>72</sup> and
  - (c) Allianz, as the APRA-authorized issuer of the insurance, confirms the position as put by Mr Winter, and does not seek to blame AWP for its failing to remedy websites selling its insurance products.
- 73 Counsel Assisting sought to extrapolate from Allianz’s failings in relation to AWP more general failings in respect of the supervision of other third party distributors, including specifically car dealers and financial institutions selling Allianz products.<sup>73</sup> Counsel Assisting suggested that Ms Callahan accepted as much.
- 74 Allianz submits that:
- (a) this was not a fair representation of Ms Callahan’s evidence as a whole; and
  - (b) any such a finding – i.e. beyond *past* inadequate oversight *specifically in respect of AWP* – is not fairly open on the evidence.
- 75 In this regard, Ms Callahan’s oral evidence on this topic began from the historical point of the remediation that Allianz agreed with ASIC in 2017 in respect of add-on insurance sold by car dealers.<sup>74</sup> When asked whether the problems with AWP and car dealers extended to other distributors, Ms Callahan accepted that they did in the *past*, but noted that programs have since been put in place,<sup>75</sup> and that the required financial investment to implement them had also been made.<sup>76</sup>
- 76 Ms Callahan noted that some had been put in place prior to her starting as Chief Risk Officer, being those earlier in 2017 arising out of the add-on insurance remediation arrangement agreed with ASIC.<sup>77</sup>

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<sup>68</sup> Transcript 18 September 2018 – p.6027.15.

<sup>69</sup> See for example the following clauses of the new Underwriting Agreement at tab 1 of the First Winter Statement: 2.3(c), 2.4, 2.5, 4.1, 5 and particularly 17 (Compliance).

<sup>70</sup> Transcript 21 September 2018 – p.6499.5.

<sup>71</sup> Transcript 21 September 2018 – p.6499.5 to p.6499.10.

<sup>72</sup> Transcript 17 September 2018 – p.5950.5 to p.5950.30.

<sup>73</sup> Transcript 21 September 2018 – p.6499.10 to p.6499.15.

<sup>74</sup> Transcript 18 September 2018 – p.6029.5.

<sup>75</sup> Transcript 18 September 2018 – p.6031.25.

<sup>76</sup> Transcript 18 September 2018 – p.6031.30.

<sup>77</sup> Transcript 18 September 2018 – p.6031.30 to p.6031.40.

- 77 Similarly, it was not a fair reflection of Ms Callahan's evidence to refer only to the fact she had not yet provided final sign off upon whether the manual controls over Allianz's third party distributors were effective.<sup>78</sup> In fact, Ms Callahan stated that she was satisfied that Allianz had effective supervision and monitoring of third party distributors of Allianz's products<sup>79</sup> and on two separate occasions stated that she believed that the manual controls that were presently in place were effective.<sup>80</sup>
- 78 What Ms Callahan did go on to state was that the ultimate goal was to move the manual modes of supervision of monitoring into automated modes, as this was "*always the strongest control*".<sup>81</sup>
- 79 Given those matters, Allianz submits that the evidence before the Commission is insufficient for it to fairly reach any conclusion as to the cause of the conduct in respect of Allianz's supervision of its third party distributors beyond past failings in its oversight of AWP.<sup>82</sup>

### *Allianz's culture in respect of risk and compliance*

- 80 The final matter or cause to which Counsel Assisting suggested the relevant conduct was attributable was that:<sup>83</sup>

*"... Allianz's culture is one that does not consider risk and compliance as a priority, and which adopts a defensive attitude when challenged about its practices."*

- 81 Allianz does not accept that sweeping and unqualified findings in the terms put by Counsel Assisting, particularly as a statement of the current state of affairs, is supported by the evidence before the Commission.
- 82 Counsel Assisting cited five, or possibly six, grounds for this proposition. It is necessary that Allianz record its response to each ground. Allianz will also record matters not expressly cited as being considered by Counsel Assisting in arriving at this conclusion, but which it considers essential factors in any consideration of its culture of compliance.
- 83 The grounds Counsel Assisting relied upon were as follows:
- (a) Allianz having an insufficient appreciation of the consequences for customers of having the relevant material on the website;<sup>84</sup>
  - (b) Allianz's management not considering the matter to be a priority;<sup>85</sup>
  - (c) a focus upon technical rather or legal compliance, rather than encouraging a culture that really looked to improve Allianz's processes;<sup>86</sup>
  - (d) a failure to devote adequate resources to compliance,<sup>87</sup> and

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<sup>78</sup> Transcript 21 September 2018 – p.6499.15 to p.6499.20.

<sup>79</sup> Transcript 18 September 2018 – p.6031.45.

<sup>80</sup> Transcript 18 September 2018 – p.6032.10 to 6032.15: "Yes, I see. But you don't yet know whether they are effective? --- They appear that they are" and p.6032.15 to p.6032.20 "But you don't know. Is that right? --- I – I have not yet provided my final sign-off on anything that they are, but from what I see, I see structures in place, monitoring in place that has the effect of the outcomes that we wanted to achieve" [emphasis added].

<sup>81</sup> Transcript 18 September 2018 – p.6032.20.

<sup>82</sup> Or perhaps, at the absolute highest, historical shortcoming in respect of other third party distributors that have subsequently been addressed. Although this was not evidenced in detail or linked specifically to any of the findings of misconduct or conduct failing to meet community standards and expectations, so ought to not properly feature in any findings.

<sup>83</sup> Transcript 21 September 2018 – p.6499.15.

<sup>84</sup> Transcript 21 September 2018 – p.6499.20 to p.6499.25.

<sup>85</sup> Transcript 21 September 2018 – p.6499.25.

<sup>86</sup> Transcript 21 September 2018 – p.6499.25 to 6499.30.

- (e) the way Allianz reacted to reports from EY and Deloitte about the adequacy of its risk and compliance arrangements.<sup>88</sup>
- 84 Dealing with the grounds in order, Allianz has conceded that those set out in sub-paragraphs 83(a) and 83(b) above were causes of the particular compliance failure the subject of the Commission's attention, being the misleading content on the relevant websites: its witnesses proffered these causes both by way of witness statement<sup>89</sup> and in their oral evidence.<sup>90</sup>
- 85 Allianz's 12 June 2018 letter to ASIC cited seven examples of what it considered to be similar incidents of misleading content appearing on websites selling its insurance. It is not suggested (nor could it reasonably be) that any of those seven similar incidents is of a similar magnitude. Accordingly, Allianz submits there is no basis for the Commission to extrapolate out from these incidents into a broader finding with respect to its compliance culture as a whole, particularly as a statement of the present state of affairs.
- 86 With respect to a focus upon technical or legal compliance (sub-paragraph 83(c) above), Ms Callahan was precise in her evidence in this regard: she stated that while she had viewed past instances of this approach in years gone by,<sup>91</sup> by contrast, both in her time as Chief Risk Officer (being since December 2017) and during the time leading up to that point, this was not an accurate assessment of the compliance culture within Allianz.<sup>92</sup> Ms Callahan also clarified that Allianz's Head of Compliance had *held* a view regarding the focus upon technical or legal compliance, and that this had led to improvements as part of the Compliance Transformation Program, including the Breach Review Committee.<sup>93</sup>
- 87 In giving the failure to devote adequate resources to compliance as a basis for this proffered cause (sub-paragraph 83(d) above), Counsel Assisting appeared to accept that it had very recently been remedied, albeit only just prior to Ms Callahan giving evidence.<sup>94</sup> This is consistent with Ms Callahan's evidence throughout,<sup>95</sup> including that she had received nothing but support at a senior level within Allianz for not only the major initiative of the Compliance Transformation Program but also the significant financial investment that that initiative entails.<sup>96</sup>
- 88 Finally, Allianz does not accept that the way in which it reacted to reports from EY and Deloitte in respect of its risk and compliance arrangements can fairly be extrapolated out to support the generalised finding suggested by Counsel Assisting.
- 89 In this regard, the interactions between Allianz and EY in respect of EY's risk report have been considered above. For the reasons given, the Commission should not find those interactions on the part of Allianz to be improper or representative of any broader problem with Allianz's culture.
- 90 With respect to the EY compliance report, Allianz accepts (as Ms Callahan did in her evidence) that the evidence shows that its representatives took steps to try to convince EY to deliver a report that

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<sup>87</sup> Transcript 21 September 2018 – p.6499.30.

<sup>88</sup> Transcript 21 September 2018 – p.6499.30 to p.6499.35.

<sup>89</sup> First Winter Statement at paragraph 119.

<sup>90</sup> Transcript 17 September 2018 – p.5926.35; p.5956.30 (Mr Winter); and Transcript 18 September 2018 – p.5995.25; p.5996.35 (Ms Callahan).

<sup>91</sup> Transcript 18 September 2018 – p.6032.35 to p.6032.40.

<sup>92</sup> Transcript 18 September 2018 – p.5996.15 to p.5996.20; p.6033.5 to p.6033.15; p.6054.5.

<sup>93</sup> Transcript 18 September 2018 – p.6052.25 to p.6053.45.

<sup>94</sup> Transcript 21 September 2018 – p.6499.30.

<sup>95</sup> Transcript 18 September 2018 – p.5989.45; p.5996.10 to 5996.20; p.6032.40; p.6069.25 to p.6069.30; p.6069.45.

<sup>96</sup> Transcript 18 September 2018 – p.6055.35 to p.6055.40.

was more positive to Allianz than the original draft. As has been noted at paragraph 59 above, however, interaction between Allianz and EY in respect of the draft reports was consistent with the terms of EY's engagement.

- 91 As Ms Callahan noted in her oral evidence, some of Allianz's suggestions for the compliance report were apparently accepted by EY, while others were not.<sup>97</sup> To the extent that certain of EY's findings of "evolving" in its first draft report moved to "established" in the final version (and noting one finding of "established" was moved to "evolving"), Allianz sets out as Annexure A to these submission the documents that were provided by Allianz to EY as part of the interactions that led to these changes. The documents in Annexure A were all produced to the Commission, although not all of them have yet been tendered into evidence.
- 92 There was no suggestion by Counsel Assisting, nor could there fairly be, that EY's independence (as described in paragraph 62 above) was compromised by its interactions with Allianz. Allianz submits that it would be unfair to view these interactions as representative of so broad a systemic issue as to give rise to the finding articulated by Counsel Assisting.
- 93 Annexure A to EY's final compliance report<sup>98</sup> contained more recommendations than the same part of the draft report,<sup>99</sup> and a number of the final recommendations were expressed in more definitive terms than was originally the case in the draft report.<sup>100</sup> Further, and in terms of Allianz's attitude when challenged about its practices, the evidence is that each of these recommendations was accepted and adopted by the Board Risk Committee of Allianz and an action plan put in place as a result.<sup>101</sup>
- 94 With respect to Deloitte's report, Allianz submits that the only aspect of its response that potentially reflects poorly upon its compliance culture as a whole is Ms Callahan's immediate action to ask that it be retracted. This was a regrettable human error, which Ms Callahan acknowledged.<sup>102</sup>
- 95 Ms Callahan explained both in her statement<sup>103</sup> and her oral evidence<sup>104</sup> that she felt that Deloitte's report had not responded to the request, and that it had set out as future suggested actions, matters that had already been implemented. For example on page 14<sup>105</sup> of the 9 July 2018 Deloitte report the Breach Review Committee is listed under the heading of "Change Actions (suggested)", however, as can be seen by the minutes at tab 16 of the First Winter Statement, the Breach Review Committee had been established by at least 21 May 2018.<sup>106</sup>
- 96 In any event, Ms Callahan's request for the draft report to be retracted was not with a view to suppressing the report from Allianz's Managing Director or Board. Deloitte's report was provided to the Board of Allianz, along with Ms Callahan's responsive document, and Deloitte have been engaged to complete a larger and more formal body of work. That is, the APRA Risk Governance Written Assessment, which Ms Callahan confirmed will be an analysis of culture, accountability and

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<sup>97</sup> Most notably, when the comments contained in the marked-up version of the compliance report sent by Ms Scott-Makenzie on 24 October 2017 (attachment to Exhibit 6.293, ALZ.0001.0152.0001) are compared to the final version of 2 November 2017 (at tab 14 of the Callahan Statement) it is apparent that very few were incorporated.

<sup>98</sup> At tab 14 of the Callahan Statement: Annexure A: ALZ.0001.0078.0096 to ALZ.0001.0078.0098.

<sup>99</sup> At Tab 15 of the Callahan Statement: Annexure A: ALZ.0001.0078.0141 to ALZ.0001.0078.0142.

<sup>100</sup> For example, removal of word "Consider" at parts 3.1, 3.2, 3.6 and 3.10.

<sup>101</sup> Callahan Statement at paragraphs 46 to 47. Transcript 18 September 2018 – p.6049.1 to p.6049.10.

<sup>102</sup> Transcript 18 September 2018 – p.6064.30 to p.6064.35.

<sup>103</sup> Callahan Statement at paragraph 58.

<sup>104</sup> Transcript 18 September 2018 – p.6064.20 to p.6064.25.

<sup>105</sup> Tab 23 of Callahan Statement (ALZ.0001.0078.0293).

<sup>106</sup> This was referred to by Ms Callahan in her oral evidence at Transcript 18 September 2018 – p.6066.25 to p.6066.35.

governance within Allianz and which will include consideration of both Deloitte's report and the implications of the requested retraction.<sup>107</sup>

- 97 For those reasons, and considered properly in their true context, it is submitted that Allianz's responses to the reports of EY and Deloitte does not fairly lead to the unqualified finding Counsel Assisting suggested is available.
- 98 Furthermore, and finally, the current position is that Allianz is undertaking a significant body of work involved in the Compliance Transformation Program. Ms Callahan gave evidence that she had received nothing but support, both in terms of resourcing and cooperation, for this program,<sup>108</sup> the key aspects of which were summarised in her statement<sup>109</sup> as follows:
- (a) implementation of the Compliance Policy;
  - (b) the Breach Review Committee;
  - (c) changes to the reporting structures to the Board of Allianz, including separate in-camera sessions with both the Head of Compliance and the Chief Risk Officer;
  - (d) improvements to compliance breach reporting; and
  - (e) a focus upon embedding a positive compliance and governance culture within Allianz.
- 99 Allianz submits that these individual initiatives, as part of the Compliance Transformation Program more broadly, weigh heavily against a finding in the terms suggested by Counsel Assisting.

### Application for leave to tender

- 100 Allianz seeks to tender three categories of documents that were not tendered at the Round 6 Hearings.
- 101 *First*, Allianz seeks to tender the documents identified in paragraphs 16 to 19 above<sup>110</sup> that show that Allianz did in fact notify ASIC within 10 business days of the relevant compliance incidents that were marked with an asterisk in Exhibit 6.299.
- 102 The reason that these were not tendered at the Round 6 Hearings is that Ms Callahan had in her oral evidence (mistakenly) conceded that the asterisk denoted reporting to ASIC outside the 10 business day limit. These documents were drawn to Ms Callahan's attention after she completed giving her evidence and she has since confirmed that the documents do demonstrate that ASIC was notified of the relevant compliance incidents.
- 103 Each of these documents have already been produced to the Commission. Their document identifiers are DTT.0001.0004.0026, ALZ.0001.0089.0164, ALZ.0001.0071.9210, and ALZ.0001.0089.0335.
- 104 *Second*, Allianz seeks to tender the documents identified in paragraphs 59 and 61 above that evidence the terms of EY's retainer to produce both the CPS 220 mandated risk report and the report on compliance, and the email chains as between representatives of Allianz and APRA that evidence that APRA had been provided with the EY Proposal (as defined above), which included the "work steps" described in paragraph 60 above.
- 105 The reason that these documents were not tendered at the Round 6 Hearings is that they were brought to the attention of those that represent Allianz following the completion of the Round 6 Hearings.

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<sup>107</sup> Transcript 18 September 2018 – p.6080.1 to p.6080.10.

<sup>108</sup> Transcript 18 September 2018 – p.6055.35 to p.6055.40.

<sup>109</sup> At paragraphs 71 to 81.

<sup>110</sup> With the exception of ALZ.0001.0071.8620 which is at tab 16 of the First Winter Statement.

- 106 The Project Agreement is available to the Commission, but the remaining documents in this category are not. The document identifier for the Project Agreement is ALZ.0001.0097.0006. The remaining documents are described as:
- (a) EY Proposal (as defined above);<sup>111</sup>
  - (b) email from Chris Kind of APRA to Yvonne Zhu of Allianz dated 24 July 2017 at 10:22 PM;<sup>112</sup>
  - (c) email from Yvonne Zhu of Allianz to Chris Kind of APRA dated 10 May 2017 at 6:16 PM;<sup>113</sup>  
and
  - (d) email from Karen Wong to Yvonne Zhu dated 10 May 2017 at 1:30 PM.<sup>114</sup>
- 107 *Third*, Allianz seeks to tender the documents described in Annexure A, which constitute documents provided to EY by Allianz in the course of the interactions that led to certain of its findings of “evolving” in its draft compliance report moving to “established” in the final version.
- 108 The reason that these documents were not tendered at the Round 6 Hearings is that those that represent Allianz have re-assessed their relevance following the oral evidence, and now consider that they ought to be part of the parcel of materials considered by the Commission as part of a fair assessment of the interactions between Allianz and EY that led to these rating changes, particularly having regard to the terms of EY’s retainer and the fact that those relevant terms were made available to APRA.
- 109 All of the documents identified in Annexure A have already been produced to the Commission.

**DATED:** 1 October 2018

**B W WALKER**  
**J R J LOCKHART**  
**T M MEHIGAN**  
**T P WARNER**

**Allens**  
Solicitors for Allianz

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<sup>111</sup> ALZ.0001.0164.0011.

<sup>112</sup> ALZ.0001.0164.0019.

<sup>113</sup> ALZ.0001.0164.0019.

<sup>114</sup> ALZ.0001.0164.0001.

**Annexure A - EY Compliance Framework Assessment**

**Documentary support for changes to rating between draft and final reports**

Item	Compliance Structure Element	Rating 25 September 2017 draft report	Rating 2 November 2018 final report	Documents provided which support change in rating (if any)
1	Legal/Regulatory	Evolving	Established	<ul style="list-style-type: none"> <li>• Email to C O'Sullivan from K Scott-Mackenzie dated 9 October 2017 [ALZ.0001.0097.2790], attaching: <ul style="list-style-type: none"> <li>○ an email to K Scott-Mackenzie from H Adams-Nkala dated 21 June 2017, containing Radford review summary and external legal advice [ALZ.0001.0097.2795]</li> </ul> </li> <li>• Email to P Andric and C O'Sullivan from K Scott-Mackenzie dated 25 October 2017 [ALZ.0001.0097.3304], attaching: <ul style="list-style-type: none"> <li>○ the Compliance plan available from the Allianz intranet [ALZ.0001.0097.3307]</li> <li>○ an email to Risk and Compliance Officers from H Adams-Nkala dated 25 May 2016 re updates on relevant regulatory requirements [ALZ.0001.0097.3309].</li> </ul> </li> </ul>
2	Organisational structure	Evolving	Established	<ul style="list-style-type: none"> <li>• Email to C O'Sullivan from K Scott-Mackenzie dated 27 September 2017 [ALZ.0001.0097.2719], attaching: <ul style="list-style-type: none"> <li>○ SMT Report dated May 2016 titled 'Risk &amp; Compliance Officer Role' [ALZ.0001.0097.2724]</li> </ul> </li> <li>• Email to C O'Sullivan from K Scott-Mackenzie dated 9 October 2017 [ALZ.0001.0097.2998], attaching: <ul style="list-style-type: none"> <li>○ The Risk Committee Report dated July 2017 titled 'Annual review of Compliance Charter' [ALZ.0001.0097.3002]; and</li> <li>○ the draft 2017 Compliance Charter [ALZ.0001.0097.3003].</li> </ul> </li> <li>• Email to P Andric and C O'Sullivan from K Scott-Mackenzie dated 25 October 2017 [ALZ.0001.0097.3304], attaching: <ul style="list-style-type: none"> <li>○ RCO presentation dated 19 October 2016 [ALZ.0001.0097.3317];</li> <li>○ Agenda from the Risk &amp; Compliance Officer monthly meeting dated 19 October 2016 [ALZ.0001.0097.3326];</li> <li>○ Minutes from Risk &amp; Compliance Officer monthly meeting dated 19 October 2016 [ALZ.0001.0097.3338]; and</li> <li>○ Risk &amp; Compliance Office (RCO) Compliance Guide [ALZ.0001.0097.3327].</li> </ul> </li> </ul>
3	Monitoring & evaluation	Evolving	Established	<ul style="list-style-type: none"> <li>• Email to C O'Sullivan from K Scott-Mackenzie dated 9 October 2017 [ALZ.0001.0097.2790], attaching: <ul style="list-style-type: none"> <li>○ an internal Allianz email dated 23 March 2017 re TIO Post Integration Review [ALZ.0001.0097.2892];</li> <li>○ a spreadsheet providing updates on various reviews [ALZ.0001.0097.2864];</li> </ul> </li> </ul>

				<ul style="list-style-type: none"> <li>○ the Corporate Compliance report dated September 2016 titled 'Compliance Quality Assurance Program - Pilot' [ALZ.0001.0097.2807];</li> <li>○ various notification memorandums, stating that reviews will be undertaken, including: <ul style="list-style-type: none"> <li>▪ Privacy Review [ALZ.0001.0097.2854];</li> <li>▪ Policy Lifecycle – AWP Direct [ALZ.0001.0097.2799];</li> <li>▪ Policy Lifecycle – Broker &amp; Agency [ALZ.0001.0097.2803];</li> <li>▪ Policy Lifecycle – Small Business Advantage Pack [ALZ.0001.0097.2888].</li> </ul> </li> <li>• Email to C O'Sullivan from K Scott-Mackenzie dated 11 October 2017 re QA testing [ALZ.0001.0097.3043], attaching: <ul style="list-style-type: none"> <li>○ the draft AWP Quality Assurance Report [ALZ.0001.0097.3046]; and</li> <li>○ the draft Broker &amp; Agency Quality Assurance Report [ALZ.0001.0097.3056].</li> </ul> </li> <li>• Email to P Andric and C O'Sullivan dated 25 October 2017 [ALZ.0001.0097.3378], attaching: <ul style="list-style-type: none"> <li>○ the ARICO and Compliance scorecard email to Operations RCO [ALZ.0001.0097.3382];</li> <li>○ the ARICO report consultation with RDD RCO 2016 [ALZ.0001.0097.3384];</li> <li>○ the Compliance Scorecard B&amp;A RCO [ALZ.0001.0097.3385];</li> <li>○ minutes of the Risk and Compliance Officer monthly meeting dated 17 August 2016 [ALZ.0001.0097.3386]; and</li> <li>○ Ticket Evidence Gathering and Monitoring Procedure dated 29 December 2016 [ALZ.0001.0097.3390].</li> </ul> </li> </ul>
4	Risk Assessment	Evolving	Established	<ul style="list-style-type: none"> <li>• Email to C O'Sullivan from K Scott-Mackenzie dated 9 October 2017 [ALZ.0001.0097.2998], attaching: <ul style="list-style-type: none"> <li>○ the 2016 Compliance Risk Assessment Report [ALZ.0001.0097.3012]; and</li> <li>○ a spreadsheet documenting a compliance exercise undertaken by the group in preparation for the 2017 Compliance Risk Assessment [ALZ.0001.0097.3011]; and</li> <li>○ the Compliance Incident notification form for IBR-002491 [ALZ.0001.0097.3019]</li> </ul> </li> <li>• Email to C O'Sullivan from K Scott-Mackenzie dated 27 October 2017 [ALZ.0001.0097.3434], attaching: <ul style="list-style-type: none"> <li>○ the Integrated Risk and Control System Guideline effective 1 May 2017 [ALZ.0001.0097.3440]; and</li> <li>○ the Compliance Risk &amp; Maturity Roll-out presentation dated February 2017 [ALZ.0001.0097.3494].</li> </ul> </li> </ul>