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TRANSCRIPT OF PROCEEDINGS

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THE HONOURABLE K. HAYNE AC QC, Commissioner

**IN THE MATTER OF A ROYAL COMMISSION
INTO MISCONDUCT IN THE BANKING, SUPERANNUATION
AND FINANCIAL SERVICES INDUSTRY**

MELBOURNE

9.31 AM, MONDAY, 13 AUGUST 2018

Continued from 10.8.18

DAY 45

**MS R. ORR QC appears with MR M. HODGE QC, MR A. DINELLI and MS E. DIAS
as Counsel Assisting with MR T. FARHALL**

MR L. KELLY QC appears for QSuper

MR D. THOMAS appears with MS M. ELLICOTT for NAB

MR J. KIRK SC appears for Suncorp

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, we turn to a case study concerning the steps taken by one superannuation fund, QSuper, to make its products and services accessible to its
5 Aboriginal and Torres Strait Islander members in remote communities. Evidence in this case study will be given by Ms Lynette Melcer, head of technical advice for the board of QSuper.

10 This case study follows on from evidence that was given in the previous round of hearings in which we considered issues affecting consumers in regional and remote communities, including Aboriginal and Torres Strait Islander people in their dealings with financial services entities. The evidence given in those hearings included evidence about the interactions of Aboriginal and Torres Strait Islander people living
15 in remote communities with superannuation funds. In our closing statement at the conclusion of that round of hearings, we said that we would return to this issue in this round of hearings when superannuation funds have been granted leave to appear and could engage with the issues raised.

20 Our work during and in the lead-up to the last round of hearings suggested that a significant issue affecting Aboriginal and Torres Strait Islander people in remote communities was their ability to engage with superannuation funds, and to access their superannuation. We heard that many Aboriginal and Torres Strait Islander people in remote communities are unaware of their superannuation entitlements. Even when they are aware of those entitlements, they often have difficulty accessing
25 them because of difficulties caused by their remote location and because of the way in which legislative “know your customer” requirements are applied by superannuation funds.

30 We also learnt that the legislative framework is not flexible enough to permit Aboriginal and Torres Strait Islander people to nominate individuals outside their immediate family, but within their kinship structure, as their chosen beneficiaries for superannuation entitlements. We heard evidence from three individuals about the difficulties faced by Aboriginal and Torres Strait Islander people when seeking access to their superannuation entitlements. They were Mr Nathan Boyle, a senior
35 policy analyst in ASICs indigenous outreach program. Mr Boyle’s statement is exhibit 4.138. Mrs Lynda Edwards, the coordinator of financial capability at Financial Counselling Australia. Mrs Edwards’ statement is exhibit 4.140. And Mr Philip Bowden, a financial counsellor with Anglicare Northern Territory. Mr Bowden’s statement is exhibit 4.200.

40 Before explaining aspects of this evidence, the evidence of these three people, in a bit more detail, we note Mr Boyle’s evidence that there is as much diversity amongst Aboriginal and Torres Strait Islander people in terms of financial knowledge and capability, as there is in the general population. Mrs Edwards’ evidence was that
45 issues around superannuation take up an enormous amount of time for financial counsellors and capability workers who assist Aboriginal and Torres Strait Islander

people in remote and regional communities. Mr Bowden estimated that dealing with superannuation issues for his clients took up approximately 80 per cent of his time.

5 Mrs Edwards described negotiating the system of superannuation for Aboriginal people as being like:

Trying to swim upstream in a river that's really, really heavy and hard.

10 Both Mrs Edwards and Mr Boyle explained that these difficulties led to an underutilisation of superannuation entitlements and insurance – associated insurance entitlements. In Mrs Edwards' words:

You're just tired from swimming upstream and so you give up. And by giving up, you're losing out on things that could actually benefit you.

15 Mr Boyle explained that it was not unusual for him to hear reports of financial counsellors meeting with indigenous people and finding out that they are totally and permanently disabled and have a policy that they can make a claim for under their
20 superannuation, but where the time for making a claim had expired because people weren't made aware that it existed. The key themes identified by Mr Boyle, Mrs Edwards and Mr Bowden were as follows: first, there are a number of obstacles that are faced by some Aboriginal and Torres Strait Islander people living in remote communities which are common across their dealings with different types of
25 financial services entities.

These include difficulties associated with geographical isolation, language and literacy, a lack of understanding about the way in which financial products work, issues associated with kinship obligations, and identification issues. Second, a
30 number of these general difficulties manifest in particular ways in the superannuation context. In relation to financial literacy, Mrs Edwards explained that many Aboriginal and Torres Strait Islander people in regional and remote communities do not understand how superannuation works, and don't have the confidence to interact with the system without assistance.

35 These difficulties can be compounded in circumstances where English is a person's second or third language, particularly where superannuation forms use complex terms or jargon. They can be further compounded by different funds using different forms and different identification and certification procedures. In addition, Mr Boyle explained that some Aboriginal and Torres Strait Islander people contextualise
40 superannuation as being similar to stolen wages. He said that it was quite difficult sometimes for people who have had their wages taken from them to learn about a bank account that they can only access once they are old, and that they hear many of their family members passing away before they get the benefit of the money.

45 Mr Boyle said that this idea of superannuation was one of the reasons why Aboriginal and Torres Strait Islander people can give up in their dealings with superannuation funds at what might seem like a relatively small hurdle. In relation to

identification issues, Mr Boyle explained that historically speaking, Aboriginal and Torres Strait Islander people have been subject to numerous government policies, including policies around the removal of children. As a result, a lot of Aboriginal and Torres Strait Islander people in regional and remote communities do not register
5 births, deaths or marriages. Not having a birth certificate makes it difficult to obtain other forms of identification such as a driver's licence.

Even where Aboriginal and Torres Strait Islander people do hold a form of identification, their identification might be in a range of names. As Mr Boyle
10 explained, an individual might have their traditional skin name, a birth name, and an adoptive name, and it's not uncommon to see people having identification documents in all three of those names. Mr Boyle said that it was also not uncommon for multiple dates of birth to be listed on identification documents. Mr Boyle explained that when government departments issue birth certificates a significant period of time
15 after someone is born, they register the birth as either 1 January or 1 July in the year that the person believes that they were born.

This may lead to a situation in which both a government-attributed birthday and a person's actual birthday are listed on different forms of identification documents.
20 Mrs Edwards' evidence was that most financial counsellors working with Aboriginal and Torres Strait Islanders spend the majority of their day's work trying to help these people prove their identity. In relation to geographical remoteness, Mr Boyle explained that even where a person has a full set of identification documents, having such documents copied or certified in a way that meets superannuation funds'
25 requirements can cause significant difficulties in remote communities.

Mrs Edwards explained that particular difficulties arose when superannuation funds required that forms be filled out sequentially rather than all at once. Mr Boyle also explained that geographical remoteness created particular difficulties in relation to
30 medical certifications required for early access to superannuation, or in relation to claims on insurance policies held within superannuation. In many situations, medical certification must be undertaken by two independent medical experts. This poses significant difficulties if a community is only serviced by the Flying Doctor Service. In that case, Mr Boyle characterised it as:

35 *Almost impossible for a very ill person to get two medical professions to certify that.*

Mr Boyle also referred to the impact of kinship structures on dealing with Aboriginal
40 and Torres Strait Islander people with superannuation funds. He explained that Aboriginal and Torres Strait Islander people have obligations to a range of other people in their communities outside their immediate family unit. This gives rise to particular difficulties in the context of deceased estates, because in Mr Boyle's words, the superannuation system:

45 *... tends to have a focus on the nuclear family.*

For many Aboriginal and Torres Strait Islander people, those family members will not be the appropriate people to receive the estate. The appropriate people might instead be people who are not permitted under our legislative scheme to receive that payment. Mrs Edwards also referred to difficulties flowing from reduced indigenous life expectancy, and from the fact that many Aboriginal and Torres Strait Islander people in regional and remote communities die intestate. Mr Boyle referred to the complex and costly process for determining whether a deceased family member has superannuation entitlements, which he considered could deter Aboriginal and Torres Strait Islander people from investigating their options.

In recent years, there has been increasing recognition of some of these problems, and some initiatives have been developed to try and address them. These include the establishment of the Indigenous Superannuation Working Group, the release by AUSTRAC of updated guidance in relation to the customer identification of people of Aboriginal and Torres Strait Islander background, and an event known as the Big Super Day Out. We will say something briefly about each of these developments. The Indigenous Superannuation Working Group was established in May 2013. It is a cross-industry initiative that seeks to improve superannuation outcomes for Aboriginal and Torres Strait Islander people.

The working group's members include superannuation industry bodies, representatives from some superannuation funds, and representatives of the First Nations Foundation. The objective of the working group is to improve the gap between indigenous and non-indigenous Australians when it comes to access to and engagement with superannuation. The working group held an Indigenous Super Summit in 2015 and, again, in 2016, which brought together government agencies, industry representatives, and Aboriginal and Torres Strait Islander advocates. Delegates at the 2016 Summit worked together to draw up a list of next steps for the superannuation industry.

These included consideration and implementation of the AUSTRAC guidance, which we will come to, across all funds; consideration of an indigenous culturally-trained unit of case workers; working with insurers around claims, management and processing; consideration of whether forms could be simplified and standardised; and collection and sharing of better data relevant to indigenous engagement with superannuation. The second key development that has occurred in recent years is the development of the AUSTRAC guidance in relation to identification requirements for Aboriginal and Torres Strait Islander people.

AUSTRAC requires reporting entities to have an anti-money laundering and counter terrorism financing program that specifies how each reporting entity identifies, mitigates, and manages the risk of its products or services being misused to facilitate money laundering or terrorism financing. A framework for identifying customers must be established as part of this program so that the reporting entity can be reasonably satisfied that a customer is who they claim to be, and for collecting and verifying customer information. This includes the collection of certain minimum "know your customer" information.

- In July 2016, coinciding with NAIDOC week, AUSTRAC updated its guidance in relation to these customer identification requirements. The updated guidance was developed in consultation with the financial sector and other government agencies. Ms Melcer will give evidence about her role in this process. The updated guidance
- 5 recognises that some customers may not have identification documents that reporting entities most commonly use to establish and verify the identity of their customers, or that the information contained in the documents may no longer be accurate or up to date. As a result, these people may face barriers in their access to financial services.
- 10 The updated guidance clarifies the identification obligations of financial services entities insofar as they relate to people of Aboriginal and Torres Strait Islander background. It recommends that, where appropriate, reporting entities consider adopting a flexible approach to the identification and verification of such persons, while remaining mindful of social and cultural sensitivities. This may include using
- 15 reliable and independent means of alternative identification for customers of Aboriginal and Torres Strait Islander heritage. Alternative identification documentation may be a statement by a referee addressing their knowledge of the person's name, address, date of birth, or other information.
- 20 The guidance provides examples of who may be a referee, including the chairperson, the secretary, or CEO of an Aboriginal and Torres Strait Islander organisation, a board member of a local Aboriginal land council, a school principal or school counsellor, a health professional or manager in Aboriginal and Torres Strait Islander medical services, or a community leader or recognised elder. During the previous
- 25 round of hearings, Mrs Edwards and Mr Boyle both gave evidence about the implementation of the AUSTRAC guidance. Mrs Edwards said that the processes outlined in the AUSTRAC guidance are not always used by financial services entities. Mr Boyle said that the AUSTRAC guidance has been taken up by financial services institutions at the head office level, but alternative guidance or alternative
- 30 ways for indigenous people to identify themselves to financial services providers hasn't filtered down to the customer-facing staff, or to the telephone staff.

Mr Boyle said that:

- 35 *Whilst the guidance is there, and we see commitment to implementing it by the financial services industry, we're still not seeing a real reduction in the difficulties that people are having identifying themselves on the ground.*

- 40 The third key development in recent years is the Big Super Day Out. This is an outreach initiative designed and coordinated by the First Nations Foundation to help Aboriginal and Torres Strait Islander people find their lost super, consolidate multiple superannuation accounts, and generally to educate the community on the benefits of superannuation. The Big Super Day Out brings together superannuation funds, the Australian Tax Office, the Department of Human Services, the ASIC
- 45 Indigenous Outreach Program, and community partners to provide a one stop shop on the day. Since 2016, the Big Super Day Out has been held in a number of locations including Sydney, Melbourne and Brisbane.

In the nine Big Super Day Out events held so far, over 750 people have been assisted and \$3.7 million of lost super has been reunited with indigenous members. However, as may be apparent from what we've said, despite these beneficial initiatives, serious obstacles still remain. The evidence given in the previous round of hearings indicated that one underlying issue is the lack of information held by financial services entities about Aboriginal and Torres Strait Islander customers. Mrs Edwards told the Commission that in work done this year, the First Nations Foundation found that no one could actually answer the question: will Aboriginal and Torres Strait Islander people have enough super for their retirement, because of the identity issue.

We heard that financial services entities are not asking customers the question of whether they consider themselves to be Aboriginal or Torres Strait Islander people. This may raise a question as to whether entities require such information to be able to act in the best interests of those customers. There has been some limited research undertaken into the superannuation entitlements of Aboriginal and Torres Strait Islander Australians. In 2016, the CSIRO-Monash Superannuation Research Cluster published a working paper titled Retirement Adequacy of Indigenous Australians. The working paper notes that while there is literature to provide an adequate understanding of the retirement outcomes of a typical worker, very little or no research has been dedicated to understanding the retirement outcomes associated with the most disadvantaged workers.

The paper estimates that the retirement gap between indigenous and non-indigenous Australians is 23 per cent. The study also found that indigenous Australians have a superannuation balance at retirement with a mean that is 46 per cent lower than what is required for a comfortable retirement. A further report has been undertaken by Challenger, a research partner in a 2016 Australian Research Council linkage project entitled Indigenous Super: Better Outcomes in Retirement. The report concluded that on average, indigenous people, particularly current retirees, have lower superannuation coverage and lower balances than the general population.

The report found that differences in age structure mean that retirement milestones capture a much smaller proportion of the indigenous population than the wider population. Consequently, less indigenous people are living long enough to enjoy the benefit of their retirement savings. The report noted that there are several areas where more research is necessary to better understand the retirement circumstances of Aboriginal and Torres Strait Islander people. In his evidence in the previous round of hearings, Mr Boyle from ASIC told the Commission that in 2014, he took Ms Melcer from QSuper on a visit to the Lockhart River community in Far North Queensland where there were many indigenous QSuper members.

He and Ms Melcer met with a significant number of people who were unable to access their superannuation entitlements and they provided them with assistance. The Commission asked Ms Melcer to provide a statement about her visit to Lockhart River, the effects of that visit, and QSuper's involvement in a number of subsequent

Do you have that statement with you?---Yes, I have.

I tender that statement.

5 THE COMMISSIONER: Exhibit 5.139, the statement of Ms Melcer of 30 July '18.

EXHIBIT #5.139 STATEMENT OF MS MELCER DATED 30/07/2018

10

MR KELLY: That's the evidence-in-chief, Commissioner.

THE COMMISSIONER: Thank you. Yes, Ms Orr.

15

<EXAMINATION-IN-CHIEF BY MS ORR **[9.57 am]**

20 MS ORR: Ms Melcer, you've been with QSuper since 1981. Is that right?---That's correct.

And QSuper is Queensland's largest superannuation fund?---Yes, that's correct.

25 And based on funds under management, it is the third largest superannuation fund in Australia?---Yes, that's correct.

30 What is the quantum of funds, approximately - - -?---Approximately - - -
- - - currently under management at QSuper?---The funds under management are approximately \$104 billion.

Now, QSuper is the default superannuation fund for all employees of Queensland Government departments?---Yes, that is correct.

35 And it's also the default superannuation fund for employees of a number of Queensland Government agencies?---Yes, that's correct.

40 So your members include teachers, nurses, emergency services workers, police officers, firefighters, council workers?---Not council workers. All the others it does, though.

Thank you. And how many members, approximately, does QSuper have?---Approximately 580,000 members.

45 And QSuper is a public sector fund. Is that right?---That is correct.

And could you explain what's meant by that?---QSuper –QSuper's origins are in state-based legislation. It commenced in 1913 and a superannuation fund established under legislation is referred to as a public sector fund.

5 QSuper describes itself as a profit for member fund. Could you explain that?---Yes, there actually are two terms, one is profit for member, one is not for profit. Pretty much they're synonymous terms.

10 Yes. Does QSuper provide insurance to its members?---Yes, it does.

And what types of insurance?---Death, total and permanent disability and income protection.

15 Thank you. Now, you're currently the head of technical advice for the QSuper board?---Yes, that's correct.

And you've been in that role or a similar role since 2003?---Yes, that is correct.

20 Could you explain what your responsibilities are in that role?---Yes. As a public sector fund, my primary role is to manage the state-based legislation and to provide resolution to complex member matters for QSuper.

25 Could I ask you to look at a document that QSuper has provided us, Ms Melcer. It's QSU.0008.0002.0072. Now, this is a slide pack that was prepared in connection with the launch of QSuper's Reconciliation Action Plan earlier this year?---That's correct.

30 Now, if we turn to 0080, we see there – I'm sorry, we see there an estimate that QSuper has made of the number of its members who are indigenous. Is that right?---Yes. Well, we did an estimation of the number of our members in Far North Queensland who in a – who live in remote and very remote communities and we also know that indigenous people tend – tend to be the most common person living in remote communities, so that's pure estimation, but yes.

35 Yes. And you needed to estimate because you don't ask your members whether or not they identify as Aboriginal and Torres Strait Islander people?---No, we do not.

40 I want to come back to that. But this estimate that is contained in your Reconciliation Action Plan presentation is based on you choosing certain postcodes in Far North Queensland that you understand to be predominantly populated by indigenous people. Is that right?---That is correct. In Queensland, the – there's actually two postcodes that cover that whole area.

45 I see. The Far North Queensland area?---Far North Queensland, yes.

So we see that the total number of Aboriginal and Torres Strait Islander members is estimated as 5648?---Yes.

And we see a pictorial representation of where some of those members live?---That's correct.

5 And we see that 293 members are estimated to live in Lockhart River. That's number 8 on the diagram?---Yes, correct.

10 And we see from these figures that the vast majority of QSuper's Aboriginal and Torres Strait Islander members live in regional, remote or very remote parts of Queensland. Is that right?---We believe that to be the case, yes.

Thank you. I tender this document, Commissioner.

15 THE COMMISSIONER: QSuper Reconciliation Action Plan Launch 2018
QSU.0008.0002.0072 exhibit 5.140.

**EXHIBIT #5.140 QSUPER RECONCILIATION ACTION PLAN LAUNCH
2018 (QSU.0008.0002.0072)**

20 MS ORR: So I want to ask you some questions, Ms Melcer, about your trip to
Lockhart River with Mr Boyle from ASICs Indigenous Outreach Program in 2014
and how that trip has shaped your understanding of issues affecting vulnerable
25 people, including Aboriginal and Torres Strait Islander people in remote
communities when engaging with their superannuation. You're familiar with the
evidence that Mr Boyle and Mrs Edwards - - -?---I am.

- - - and Mr Bowden gave in the previous round of hearings?---Yes, I am.

30 And you would have seen that Mr Boyle gave evidence that since that trip to
Lockhart River in 2014, you have become, in his words, a real champion of
indigenous superannuation issues?---Yes, I am aware of Nathan's view.

35 Now, as we've just seen from – and we see from the images on the screen, Lockhart
River is in Far North Queensland. It's about 2500 kilometres from Brisbane. Is that
right?---That is correct.

And what's the nearest regional centre to Lockhart River?---Cairns is probably the
most – the closest.

40 And how far away is Cairns?---I think it's about 450 kilometres, I believe.

45 And how do you get to Lockhart River?---You fly from Brisbane to Cairns on – one
day, effectively, and then the next day you catch another plane from Cairns out to
Lockhart River on the Skytrans, a regional plane.

Do you know what the approximate population of Lockhart River is?---Approximately 600 people.

5 And do you know what proportion of those 600 people are Aboriginal or Torres Strait Islander people?---No, I don't know. I would estimate a very large proportion.

And how long did you spend in Lockhart River on this trip?---We spent three full days working with the community in Lockhart River.

10 What did you observe, firstly, about life in Lockhart River?---My first recollection is Lockhart River is a beautiful place. It's – life is quiet, I suppose, is the observation. It's – I wouldn't say harsh, but it's not city life at all.

15 Did you meet with QSuper members while you were in Lockhart River?---Yes. We actually met over – we worked with over 100 community members, and – but we weren't just dealing with QSuper members. We worked with whatever – whatever the people in Lockhart River needed us to help them with, we helped them with. So there were four funds actually predominantly we worked with.

20 I see. So the 100 community members that you met with were members of four different superannuation funds?---Correct.

One of those was QSuper?---Yes, correct.

25 What were the other three funds?---The other three were Sunsuper, AMP and LGIASuper. QSuper was by far the largest number of members that we saw but we did help all members.

30 And what did the community members tell you about their experiences with superannuation?---It was more what they showed us than what they – they told us. The first thing, I suppose, I noticed was difficulties – clearly they had difficulties with meeting our rules of identification. Driver's licences didn't exist, passports didn't exist. They're the two main features that superannuation funds use to identify. And then people who did have driver's licences or birth certificates, which are also
35 very – often they were wrong. We had one gentleman came and saw us who wanted to have all his documents corrected because he had received his birth certificate and found out that his name was actually different to the name he had been using all his life but he didn't know about that. So the first thing that probably was obvious to me, I think the first thing I thought was before I went to Lockhart River, I thought we
40 treated – as in our industry, treated all our members equally because we had exactly the same rules for everyone. What Lockhart River showed me was that although that might be right, not everybody starts in the same place. And the simplest one is a driver's licence. We assume everyone has a driver's licence but they don't have a driver's licence. So the first thing I saw was, yes, there's difficulty with that. But on
45 the other side, everybody has an identity. So what we needed to do was to find how to prove the identity. AUSTRAC guidance is always a risk-based process. And so what we were doing while we were there was trying to find ways where people could

prove who they were. Because that's what we needed to know. We just needed to know who they were. So probably number 1 was the identification was an obvious one. Another thing that I noticed with the people that I was working with – I worked with a lady who came and saw me. We were filling in people's – what we call a
5 binding death benefit nomination form in the industry. This lady had said to me she was raising her son – her grandson because her daughter had passed away but her grandson in her mind was her son. So we filled in the binding death benefit nomination form for her and her grandson was nine. And that would be okay because at the moment we will treat the grandson as an interdependent relationship.
10 So if the lady passed away, the grandson would be entitled to the benefit. But I did say to her that as the grandson grows, it won't fit into the rules because our binding death – our dependants list is limited to children. So I suggested to her she needed to get a will, have her son or grandson nominated in the will, and that would give guidance to the board. So one of the things I noticed was the kinship that you
15 referred to previously. In a community when a child needs to be raised, the child is raised by a person and that person considers that child to be their child. So that was another thing I noticed firsthand. Other issues of technology. We – the very first day we had no access to technology at all. The second day, we had – we were using a – one of the community buildings and they had a computer. So we could access
20 technology through the computer and we could use our own computer systems, but there were no computers, let alone people be able to use them. Technology also in terms of – I had a gentleman come to me with a driver's licence and I – as a justice of the peace I was about to certify it for him and I realised he hadn't done the back and the back is where you put the address. He looked at it, he looked at me and he
25 laughed and he said they don't make photocopiers for black fellas. And I looked at it and his image was really dark. And it was because he had this really, really old photocopier. So even when he was trying to fit into the rules he couldn't because the technology wouldn't support him even to that extent. So we went and we tried to lighten it up and I certified it anyway. So there's all those sort of barriers that you
30 don't expect to see that – that we saw.

What did you learn about the impact of language barriers while you were there?---Fortunately, Lockhart River is a – most of the people there speak English, but superannuation is almost a language of – on its own. And a lot of words in
35 superannuation are hard for people to understand. So I find – I found speaking to them was in concepts that they would – they would understand, that most people would understand. But also indigenous culture has some – you have to understand how to talk to people to make sure they've understood you. There was a – something that Nathan has explained to me about making sure people will agree to you, agree
40 with you straight upfront. So what you need to do is make sure they've understood what they've agreed to. So you ask the questions a few different ways to make sure the person you are talking to really understands what you are talking to them about.

The Nathan you are referring to there is Mr Boyle from ASIC?---Mr Boyle, sorry.
45 Yes.

And is the phenomenon that you are referring to there a phenomenon that Mr Boyle referred to in his evidence in the previous round of hearings which is gratuitous concurrence, a practice of many Aboriginal and Torres Strait Islander people of agreeing with propositions that are put to them?---Yes, I believe that to be the case.

5

Yes?---I saw that firsthand as well because a gentleman came and saw me and he said to me he wanted to withdraw his – his – he wanted to withdraw his superannuation. And so we filled out the paperwork, and for the next couple of days he came back. So I went over to him and I asked him, are you – “Can I help you? Are you going okay?” And what it was is he didn’t want to withdraw it all. He only wanted to withdraw a piece of it. So we talked a bit further and we got the paperwork done properly the way he wanted it. So it was a valuable lesson to me just in general communication with people, to make sure they understand what it is you are asking them for.

15

What did you learn about the difficulties that people in communities such as Lockhart River can face with meeting the medical certification requirements imposed by superannuation funds and insurers?---Do you mind if I keep using examples?

20

Yes, not at all?---There was another gentleman that we helped, he came over to see us first because he was the gentleman whose birth certificate had his Christian names around the different way to what he had thought it all his life was. So we were helping him change all his documents to make it all line up. And he said to me – he was actually a QSuper member. And he said, “I have an injury”, and he did, he had lost his eye in a fight in Cairns, he told me, and he was in hospital for months. When he got out of hospital, he no longer had his job and his eye was – you know, he couldn’t see. And so he asked me about could he claim his – some incapacity benefits and disability benefit. So I said to him – we filled in the paperwork. I asked him – he had some – the illness had happened a number of years earlier. His – there had been automatic insurance applied to his account but in 2013. The injury had occurred way before that. So I said to him I’m not sure we can claim your insurance but let’s see if we can get the release of your preserved benefit. I said we need to find two doctors. Right. Lockhart River, the doctor is the flying doctor who comes in a couple of times a week. So that was sort of like barrier number 1. I then said to this gentleman “Can I take your photograph, do you mind?” I will take it back to Brisbane and we will talk to some doctors down there, which is what we did, took his photograph. He loved having his photograph taken. And took it back to Brisbane and I took it to – it was a QSuper member so I took it to the QSuper insurance people. They started the communication with Lockhart River, the flying doctor, got the paperwork as much as they could through there. It turned out that his injury wasn’t sufficient to stop him from working, but the doctors drilled down further into the documents and found out that he was on medication for another illness and that one definitely would stop him from working. So by these doctors going the extra mile and doing the extra digging on behalf of that member, they were able to give this person a early release on total and permanent disability. But in Lockhart River, there is no two doctors on a corner. Like in the city that’s an easy thing to fulfil but it’s not an easy thing to fulfil in a remote community.

45

Was there considerable work involved in assisting that member to get to the point where he could establish his total and permanent disability?---It – there was work involved, but we’re there for our members. This man needed help. There was no way he would have been able to do it without us. So I wouldn’t say considerable, but
5 there was work involved. But it was worthwhile work because this man ended up with not a huge account balance, but to him it was a lot of money.

And what did you learn while you were in Lockhart River about the ability of people in communities such as Lockhart River to obtain death certificates upon someone’s
10 death?---The death certificate was another interesting situation. A lady that I spoke to came and saw me to look up – she said that a man had passed away. She said “he’s my brother”, and then she said, “Well, actually he’s not my brother, he’s my uncle but my mother raised him as my brother.” So there was the kinship issue upfront. She said to me he has passed away, can we see if we can find any money.
15 So we did searches around found money actually QSuper. So we filled in all the paperwork and I said to her – I thought this was an easy request, to be honest. I said “Can you just get me a death certificate”. She said yes. She had to go into Cairns to organise that. A few weeks, maybe a month or so later I got a phone call from the office in Cairns, Births, Deaths and Marriages, saying to me this lady was here to
20 collect – get a death certificate but because she was his niece, she hadn’t a close enough relationship to get the death certificate but if I certified it – if I said it was okay it would be okay. So I said yes, it is okay. I said maybe you should look at your processes because – I said we have to, maybe you should as well. Anyway, about a month or so later again the lady rang me again because it turns out that in our
25 culture, in our society, if we have someone pass away we call a funeral director, and the funeral director is the person who sorts everything out for us including arranging the death certificate. If you don’t have a funeral director – and this man was buried culturally in his own community – the lady then had to also request her own death certificate and get it – get it done that way. We don’t know that because – I mean
30 it’s easy enough to do but you’ve got to know to do it. In fact in that instance I put this lady in touch with Mr Boyle at the IOP and asked him if he could help her get through this part of the process. Eventually we got the certificate and we did pay the money out.

35 Have you looked at or have you used more flexible ways of proving the death of a QSuper member?---Yes. Since – since then, because a lot of this has been learning for us and we’ve learned from all the experiences that we’ve had. We had one more recently which we ended up getting a photocopy – a photograph of the tombstone. We contacted a person in the community and the community member said I will go
40 and take a photograph of the tombstone, if you like, which he did, sent it back in. The tombstone had date of birth, date of death, all the details on it and we received information about the cause of death from the hospital, so that was sufficient.

45 You said while you were in Lockhart River you met with about 100 community members. Can you explain what you did in general terms to assist those 100 people while you were in Lockhart River?---Yes. We – we helped them with – in some instances it was understanding superannuation but we helped with multiples of

forms. Binding death benefit nominations, people accessing money, people who are old enough to be able to get their money through retirement could not work through our systems of forms. So we were helping them fill in forms. Certifying lots of documents as a justice of the peace. We were taking photocopies of stuff all the time, and stamping it to send it back to the funds. There was – financial hardship was a big one. There was a couple of sort of TPD type claims, just helping people fix up their own identification. So basically, just about everything.

10 So what about the people that you dealt with who were not QSuper members who were members of either AMP, LGIA, or Sunsuper. What did you do to assist them?---Sometimes people had forms. One thing in Lockhart River that I noticed was people saved all their mail. So some of their forms they just brought in and they asked us to help fill out for them and then we would take – we brought them back to Brisbane with us and gave them to the funds so that the funds could process them. In
15 some instances we had to ring the funds and we used our contacts to talk to people and ask them, “Can you help us fill in these forms for these people”, or we could download it – download some of the forms when we were in that – in that sort of pathway buildings, if you like.

20 When you returned from Lockhart River, did you take further steps to assist – let’s start with the members of your own fund. I will ask you about members of other funds as well, but did you take further steps upon your return to assist your members?---Yes. Well, the first thing we did, of course, was finalise all the documents we had brought back and got all those cases sorted. Then we decided to
25 look further afield at what was going on in Far North Queensland and it refers back to your – that piece of work there. So we looked at all our members who had lost – we had sort of lost contact with, if you like, in far North Queensland and we downloaded, based on postcodes, all of those members. We noticed when we did that there was a couple of hundred of people who were clearly duplicate records, so
30 we merged those records into one. And it was – they were clearly duplicate because, they obviously had moved from employer to employer. Someone had left off a couple of letters from the surname but the date of births was exactly the same so it was really easy for us to put it together. Then we started looking further at the other lost accounts. We contacted the electoral office. They gave us new addresses for the
35 people that were lost. And the electoral office also told us that there were at least 50 on our list who had – who were deceased that we didn’t know about. So we then started a couple of different processes. One, we contacted Births, Deaths and Marriages to get information about the deceased estates accounts that we knew of, and on the other side we started contacting people in – back up in Far North
40 Queensland, targeting, first, people who were already in a situation where they should be able to access their money, like based on what we knew they were over their preservation age. So we started writing to them. Again, Mr Boyle at ASIC assisted us to make sure our letters were written in a way that was easy for them to understand. Where we – so we – our first communication was, “Can you contact
45 us?” Then once they contacted us we started using prepopulated forms where we could, we put little notes on the forms to say they were for Far North Queensland. And, therefore, when they came back in, our QSuper would know these people were

from this particular mail-out and know how to treat them especially or differently if need be, with identification, whatever else might have to be. Then with the deceased ones, we started making phone calls into Far North Queensland. We started off in Lockhart River with a contact I had made when I was up there, a gentleman who ran the art gallery, but we ended up ringing police officers, hospitals, justice associations, anyone up there we would – we would just ring people to look for someone, or to look for someone who would be the next of kin. We had been given some names, I should say, to clarify that, Births, Deaths and Marriages, when they give you the information, they actually tell you who – they give you the next of kin that they know. So that was a person we were starting with to try and work through. So since we did all this work, we have reconnected 80 people with lost super totalling over \$2 million and paid out 17 estates valued at 1.7 million. And we're still working on these. This is an ongoing. They do take a while to sort out. And one of the biggest problems is remoteness. That three – in those three days when we helped 100 people. That would take years if you don't go into a community. The best benefit that we ever had was going into a community and actually being able to be on the ground and solve problems as they came up for people.

Again, Ms Melcer, that sounds like a significant amount of work undertaken by QSuper. What sort of impost was that on QSuper to engage in this proactive program that you have described?---It was no additional resources, no additional cost to us. It is our job to relocate members with their money and improve access to our members. It's – it's what we do. It's what we're supposed to do. And – so – it's really nothing extra. It's a little bit – it's a little bit extra but it's not an impost at all. It's writing your letters in a way that people can understand your letters. We would be sending a letter anyway so it's writing it in a certain way. We had been trying to make an estate payment. It's just going that little bit further to understand that there's some complications about this estate payment.

Do you consider you have an obligation to take the steps you've outlined?---Absolutely. As a superannuation fund it – money has to be paid into a superannuation fund. People have no choice about superannuation, they need to go somewhere. So clearly we're obligated to make sure that people can get the money when they need it. In the situations we're talking about, particularly in remote and far remote communities, they need their money. So of all the people who probably need it, this is the category of member who needs to be able to access it. And it is our systems, as in the industry systems, that we've made it difficult for people. So it is also incumbent upon us to help everybody work through the systems we've created, in my personal view.

And through the ongoing work that you've done following your Lockhart River trip, have you continued to identify members of other superannuation funds in Far North Queensland?---We have but from – by an interesting way, which is once we started work in the communities, people in other communities have contacted us just in case we might have money for them. So what we do is we – well, we're a bit limited and I can explain to you why now or later, whatever, in how we do our searches. But we were searching on the ATO website. We were searching as far as we could to see if

we could find if those people had any money in super. If they had them in another fund we would refer that member on to the other fund.

There are now limitations on your ability to do that?---Yes.

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Could you explain what they are?---Yes. The main one is when we went to Lockhart River we could access the Australian Taxation Office website to look for people with their lost super with their permission. Then we could help them reconnect with the lost super. Now that process can only be done through MyGov and by the person themselves. So if you're – persons in your own fund you can do it but an absolute – if a person is not in your own fund, you can't. The person has to do it themselves. So that's a real problem for people in remote communities because they probably don't have a computer and they may not have enough literacy skills to be able to access it anyway but they're the only ones who can look for their own superannuation now. Whereas previously we could do it and we could find where they belonged.

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So that has impeded your ability to reunite members of other funds?---Correct.

20 With that fund. And in addition to the work that you did after Lockhart River – after Lockhart River in relation to the individual members, the members of QSuper and members of other funds, when you returned, did you take other steps designed to raise awareness of these issues, firstly within QSuper?---Yes. Yes. It's – it's not a hard story to share with people at QSuper. I've done a number of presentations internally to the business about what the experiences were, what our members were experiencing, and people across the business embraced it, and have taken it on board themselves as to what they can do differently in their own areas. We've done things like – we have to have – whenever you have to have artwork in a building we now buy indigenous artwork commissioned from local artists. Our stationery that we now use, we use an indigenous supplier where we can for our stationery. We've done a reconciliation action plan which is a really important development. We've altered our written communication. A lot of the photos we now use are more culturally diverse. None of these initiatives cost anything because you have to do them all anyway. We sent some our trainers on a thing called Black Heart Training. That's an organisation that helps people – to help people to become more culturally aware and we sent our trainers on that. So our trainers then came back and made sure that all the training modules that they were producing had that sensitivity attached to it. And all the e-learning pieces they do, it's a very easy thing to forget about putting cultural diversity into things in like that but those sort of messages get people thinking all the time.

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You mentioned there in the things that you've been involved in, altering written communication. Could I ask you to look at a document that QSuper provided us which is QSU.0008.0003.0045. Now, this is a two-page document. Perhaps if we could have both pages on the screen at once. And we see, Ms Melcer, that this is an example of a simplified form of communication from QSuper. We see that someone has inserted the details of someone who is not a QSuper member in that letter, Mr

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Clark Kent, from Super Man, from Far North Queensland?---Krypton is not one of our towns.

No. You don't have the Krypton postcode?---Don't have the Krypton postcode, no.

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Can you explain, using this letter, the way in which you simplified the language as a result of your engagement with indigenous people in Lockhart River?---Well, this is actually an example of one of the letters that was specifically designed for Lockhart River. Just as simple as saying QSuper may have some money that belongs to you.

10

Yes?---Just telling the person upfront exactly what – why we're communicating. And then we go down and we talk about the examples of copies of documents that they could provide us. It's a little bit broader as well. And just the – the words, the short sentences, because often our communication is full of jargon. And we removed the jargon from this. This is – I should say that monitoring communications is ongoing. We're constantly trying to make sure that we're removing jargon from our letters. But this is a particular fund. You see the reference in the top corner: Far North Queensland. That told the business when this letter came in what its target market was.

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Yes. Thank you. I tender that letter, Commissioner.

THE COMMISSIONER: Draft letter to member, QSU.0008.0003.0045, exhibit 5.141.

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EXHIBIT #5.141 DRAFT LETTER TO MEMBER (QSU.0008.0003.0045)

MS ORR: Now, after your return from Lockhart River did you also engage in some broader advocacy work outside of QSuper?---Yes I am a member of the Indigenous Superannuation Working Group. At the Summit of 2015 I spoke and presented on what had occurred, what I had seen at Lockhart River and what I had experienced at Lockhart River. And I have spoken a few times since then at different places about what we experienced in Lockhart River, what we've done around the postcode work, the Reconciliation Action Plan, encouraging other funds to take some action as well.

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And are you able to give us some examples of some other superannuation funds who are currently members of the Indigenous Superannuation Working Group?---It's in the – the Summit document.

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Yes. I will bring that up to assist you?---Thank you.

That's RCD.0014.0035.0061. So this is a report from the Indigenous Superannuation Working Group Summit from 2016. And perhaps if we turn to 0065 within that document. We see there the superannuation funds involved at that time, in 2016 with the Indigenous Superannuation Working Group?---Yes.

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You see that there, Ms Melcer?---That's correct. Sorry, yes I do.

We see AustralianSuper, CBUS, Colonial First State, HESTA, Hostplus, QSuper, MLC, NAB, GESB, Super SA, UniSuper, and VicSuper?---Yes.

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Now, I tender that document, Commissioner.

THE COMMISSIONER: Report of indigenous superannuation Summit December '16, RCD.0014.0035 .0061, exhibit 5.142.

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**EXHIBIT #5.142 REPORT OF INDIGENOUS SUPERANNUATION SUMMIT
DECEMBER '16 (RCD.0014.0035 .0061)**

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MS ORR: Now, that was a report following the 2016 Summit of the working group. I want to ask you some questions about the previous Summit in 2015. You attended that Summit as well?---Yes, I did.

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And that was attended by other industry representatives and regulators, including AUSTRAC?---Yes, it was.

And you presented at that Summit about your experiences at Lockhart River?---Yes, I did, yes.

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Now, prior to that Summit, the working group released a discussion paper that included recommendations. Do you recall that?---Just briefly, sorry.

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To assist you, I will just bring that up as well. That's RCD.0014.0035.0001. If I take you – this is the report, again, of the 2015 summit, but I will take you within that document to 0029. If we could have 0028 and 0029 both on the screen we will see that an appendix to that report was a discussion paper released prior to the summit. And we see the recommendations of the working group on the right-hand page. And the fourth of those was that the superannuation industry through the working group engage with the ABA, AUSTRAC, and State and Federal Governments on establishing protocols on how best to address identification challenges faced by Aboriginal and Torres Strait Islander people in relation to superannuation.

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So you see that that was one of the recommendations circulated prior to the 2015 summit?---Yes.

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I tender that document, Commissioner.

THE COMMISSIONER: Report of indigenous superannuation summit, July '15, RCD.0014.0035.0001 exhibit 5.143.

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**EXHIBIT #5.143 REPORT OF INDIGENOUS SUPERANNUATION
SUMMIT, JULY '15 (RCD.0014.0035.0001)**

5 MS ORR: Now, that recommendation was discussed at the 2015 summit?---I believe so, yes.

And AUSTRAC undertook, as a result of discussions at that summit, to go away and produce such a protocol. Is that right?---Absolutely, yes.

10 And you provided feedback on drafts of that protocol?---Yes, I did.

And that protocol became the AUSTRAC guidance that I referred to earlier?---Yes.

15 Which was released in 2016?---Yes, it did.

Now, you may have heard before my reference to the evidence of Mr Boyle and Mrs Edwards that although that AUSTRAC guidance has been acknowledged by financial services entities at a high level, that they believe not enough is being done to ensure that those at the coalface are aware of and applying that guidance. What can you tell us about the way QSuper ensures that the people at the coalface in your organisation are applying the AUSTRAC guidance?---Well, it is – it's a – an ongoing journey that we continue to make sure that we are being as flexible as possible with our members to help them to provide their identification. And it's for all members, because although indigenous people have issues, people sometimes in domestic violence situations, homeless people have the same – same issues. The principle we try to apply is that everybody has an identity and our job is to help them prove the identity to the – to the point where we're comfortable that we are not paying the wrong person or doing the wrong thing. So there's a number of issues ongoing with QSuper where it's an awareness issue, and we've recently released an AUSTRAC – a video which is a – which is an e-learning piece of work that's going out to the business, I think, this month because I think this is cultural awareness month. So it's an ongoing issue to remind people about the flexibility that AUSTRAC allows through its guidance notes.

35 Can I ask you to look at another document that QSuper has provided us which is QSU.0008.0007.0001. Now, Ms Melcer, is this an example of an alternative more flexible way of proving the identity of an Aboriginal and Torres Strait Islander person?---Yes, it is. It's a perfect example.

40 Yes. So this is a letter that you received at QSuper?---Mmm.

In relation to the identity of one of your members?---That's correct.

45 And the details of that member have been removed from this version of the letter, but we see that it is a letter from Junkuri Laka, the community justice group and

community legal centre for Mornington Island, a remote Aboriginal community in Queensland?---That's correct, yes.

5 And in this document we see that the community legal centre told QSuper that the particular person was:

A community member of Mornington and well known to us, as are her parents and the wider family who are all members of our indigenous community.

10 The person is currently living at an address. And a photograph of the person was attached to the letter?---That's correct, yes.

And was QSuper satisfied, based on this letter, of the identity of this person?---Yes.

15 For the purpose of the "know your customer" requirements in the AUSTRAC legislation?---Yes, we were.

20 And is this an example of how the AUSTRAC guidance can work, the sort of document that can be provided that superannuation funds can accept as an alternative form of proof of identification?---Yes, it is.

Thank you. I tender that document, Commissioner.

25 THE COMMISSIONER: Identity declaration, Junkuri Laka, Mornington Island QSU.0008.0007.0001, exhibit 5.144.

**EXHIBIT #5.144 IDENTITY DECLARATION, JUNKURI LAKA,
MORNINGTON ISLAND (QSU.0008.0007.0001)**

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35 MS ORR: Again, Ms Melcer, I want to ask you if it's an impost on QSuper to have these sorts of alternative procedures for allowing a person such as a person living in Mornington Island to prove their identity to QSuper?---No, that's not an impost at all. . We look at it as – it's just what we do. We need to work out a way of getting identity proven and this is a way of doing it.

40 Now, having visited Lockhart River in 2014 earlier this year did you visit another remote indigenous community with the ASIC Indigenous Outreach Program?---Yes, I did.

And was that community the APY Lands?---Yes, it was.

45 Can you explain where the APY Lands are?---The APY Lands are in Central Australia. They border the Northern Territory, Western Australia and they're in South Australia. So they're in that corner there.

And are the majority of people who live in the APY Lands Aboriginal and Torres Strait Islander people?---I would say so, yes.

5 And how long did that trip go for?---That trip was for five days, though I was only with the trip for the first two.

And were there QSuper members in the APY lands?---No, there were no QSuper members.

10 And so why did you attend that trip?---Mr Boyle asked me to go along to provide some support for the other funds who were going because they had never been into a community before, because of my, probably, interest and my desire to help and to understand what the issues are that indigenous people face when they're dealing with superannuation.

15 And do you recall which other superannuation funds attended that trip?---Yes, there was Prime Super, HESTA, AustralianSuper and Super SA.

20 How many towns were visited on that trip?---Five towns, I believe, were visited.

Can you tell us a little about the APY Lands and life in the APY Lands?---I think my view is that life in the APY Lands is probably pretty harsh. They have the same issues of Lockhart River in terms of, I would expect, economic-type issues, unemployment, high cost of living. It's quite harsh territory in Central Australia, their remoteness. They had only received, I think, mobile phone access probably two or three weeks prior to the visit. So when you're trying to access a superannuation fund via the internet and you have no phone access, that's almost impossible. So the feelings of remoteness and disconnectedness to your superannuation must be huge in those communities. Same issues to do with identification that we've seen, same issues of literacy. Harder issues in the fact that most of the people in those communities don't speak English at all. So we had to work through interpreters. I learned that there is no indigenous word for superannuation. So it's not a very good place to start when you don't even have a word to define that. We talked about making sure that we didn't use words that are common in our language, our superannuation language, that is, of consolidation, preservation, make it simple so people could understand what we're talking about.

35 And were people in the APY Lands members of the superannuation funds that you identified? Were there members there from HESTA, Prime Super, AustralianSuper, and Super SA?---I believe so. I believe AustralianSuper and Super SA were probably the most – had the most members and then HESTA and I think – I'm not sure if Prime Super had any or if they had a very few.

45 And you've described some ways in which the experiences in which people living in that area were even more difficult than the experiences of the people living in Lockhart River, but were the issues that you saw the same style of issues that you had seen on your Lockhart River trip?---Yes. The same style. In some ways, they

were – they were worse, they were worsened conditions. Like I said, English language makes it hard when we do all our communications as in the industry does all our communications probably in one language. The jargon – it just seemed harder. It was – life was harder there than it was in Lockhart River.

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Now, can I ask you, Ms Melcer, having had those experiences, both in Lockhart River and in the APY Lands, and having embarked on the advocacy work that you've embarked on in recent years, can I ask you some questions about possible ways to improve the experience of vulnerable people such as people living in these communities in relation to superannuation. Can I start by asking you about binding nominations. The legislation currently only permits a person to nominate their legal personal representative or a dependant to receive death benefits. Is that correct?---That's correct.

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15 And you referred before to the example of the grandmother who wanted to nominate her nine-year-old grandson to receive death benefits?---Yes, correct.

Now, I think I understood your evidence to be that whilst that nine-year-old grandson remained a dependant that would be permissible, but when the grandson ceased being dependent on the grandmother, our legislative framework would not allow that nomination. Is that correct?---That's – yes. That's correct. My understanding is that a dependant includes a person's child irrespective of their age. Once this child is older than – like he's no longer dependent on – on his grandmother he would no longer be considered her child.

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That's because he's not her biological child, he's her grandchild?---Correct. And he's not her adoptive child under the system that – I suppose that Australia generally uses. So I think we should be looking at some extension of that definition of dependency to include a cultural – a child who's adopted under cultural law. Now, that should be of no impost because it allows the – the member to identify exactly who they consider to be their child. I can't think of anything worse than a small child growing up thinking a person is their mother, and then their mother dies and a system like the superannuation system says, "No, sorry, we don't recognise you as – that person as your mother any more", because, you know, you didn't sign our paperwork, or whatever, do our legal system. So I think it definitely should be expanded to include children.

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And in that way to reflect the kinship structures that operate in - - -?---Yes.

40 - - - Aboriginal and Torres Strait Islander communities?---And respect them, yes.

Yes. Can I ask you also about the early release of money held in superannuation. Does QSuper permit early release of a person's superannuation where they're experiencing severe financial hardship?---Yes, it does.

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And do you know roughly what percentage of funds that QSuper permits to be released prior to preservation age are released on the basis of severe financial hardship?---I think – I think it's around 30 per cent.

5 Thank you. And can you give us an example of a situation in which QSuper has permitted the early release of superannuation to someone in a remote community based on severe financial hardship?---I – I dealt with a lady in Lockhart River who – there are two elements to the – the arm or the financial hardship criteria. One is that you have to be on income support payments for 26 weeks and Centrelink or DHS
10 provide a form for that. So she had that, that was fine. The second part is that you cannot meet your daily living expenses. And that's a – that sort of can be quite a complex document. So when this lady and I did this work, this lady basically owned nothing. She owed – she needed money to buy food. She was living quite – all she had was her income support payment, she didn't have a home really to live in. And
15 so between her and I we filled in the forms for her and got her money – some money released for her.

Now, to your knowledge do all superannuation funds permit early release of superannuation on the grounds of severe financial hardship?---No, they do not.

20 And do you know of the funds who do not, why not?---I'm aware of a few that don't. I'm aware Super SA doesn't but I am also aware they are working towards – Super SA is a government fund. They're – they're also a public sector fund so they have to have legislative change and I'm aware they're working towards getting legislative
25 change. The other two funds I'm aware of are Sunsuper and Rest Super but I can't tell you why they don't do it.

Now, it might be said that releasing funds – doing an early release of superannuation on the basis of severe financial hardship is much more onerous for a superannuation
30 fund than other gateways to early release of superannuation because of the matters that you've just described which need to be satisfied. Again, do you regard it as an impost on QSuper to assess whether or not a person is in need of their superannuation on the basis of severe financial hardship?---You are correct in your first assessment that these are the largest claims to assess, but absolutely not an
35 impost because these are the people who need – it is these people – it's their money and they're in a situation where they need it. It's not a – we're not talking about because they want to go and do something frivolous, they need it to live. So no, I don't consider it an impost at all.

40 Thank you. Now, can I ask you, Ms Melcer, whether you have a view on whether it would be beneficial to lower the preservation age for Aboriginal and Torres Strait Islander people?---My view on that is no. And the reason I say that is because I – the argument behind lowering it is because people of Aboriginal and Torres Strait
45 Islander heritage have a lower life expectancy. I don't want to give up on that battle of closing that by saying let's reduce the preservation age and let them get their money earlier but I do acknowledge that's the truth and that that's what happens. In Lockhart River the life expectancy is even lower – it's lower again because of the

remoteness, I suspect, of the community. So I think that there are other ways that we can do that, we can get – people need to get their money to live as well. One of the options we could look at is some guidance around how we handle total and permanent disability payments and maybe one of the criteria that the trustees and
5 doctors can look at is the life expectancy of the person that they're dealing with, the distance from where they are to getting health – to see doctors, just to get treatment, all of those things must alter a person's life expectancy. So if we can be more broad about that, that would be helpful.

10 Now, are you familiar with the evidence that Mr Boyle and Mrs Edwards gave in the previous round of hearings on their views on the value of financial services entities asking their customers and members whether they consider themselves to be Aboriginal and Torres Strait Islander people?---Yes, I am.

15 And do you have a view about that?---Yes. My view on that is we shouldn't – I'm not a believer in collecting personal data unless we have a reason to use the personal data. In QSuper we strive to really understand the person that we're talking to, the – and understand what their situation is and solving for that member, and, therefore, we don't really need to know what the heritage is of the person we're talking to,
20 because we just like to help, and that's – that's the message I try and get out all the time is just to work with the member who – it doesn't matter what the heritage is and where they've come from.

Mr Boyle and Mrs Edwards gave evidence that Aboriginal and Torres Strait Islander
25 people have been asked to identify as Aboriginal and Torres Strait Islander over a very long period of time in connection with numerous services such as health and education services. Does that affect your view on this topic?---No, because I think with health it's really important – it's important for policy to know where indigenous people are because they have health issues. Superannuation, for me, is we should be
30 treating all our members equally but what I mean by equally is equally giving them access to their money, trying to understand their story, understand – like I said, everyone has an identity, just work with them to work out what the identity is, try and work – how they can show who their identity is, I should say. Working with them to find out what their needs are and you don't need to know their heritage to
35 know that that's like normal compassion to try and work through with people. Where there's a real good policy need I am absolutely in favour of it. I read in Mr Boyle's, I think, evidence or his statement about in banking because people in banks – to make sure that people who are in income support payments aren't in high fee
40 accounts, and if you indicate you're indigenous, then that might solve that. For me, a bank only needs to look at where the money is coming from to know a person is on income support payments. If they do a bit of extra effort they could put that money into a fee-free account. So I think there are ways where asking someone to identify isn't – is like – isn't the solution. Also, as you said before, I think, indigenous people are very diverse. And they're diverse where they live, they're diverse where they
45 work. So I don't – I'm not sure that we need to put them all into a – a group and number them.

Can I ask you, Ms Melcer, reflecting on these experiences that you've had in recent years dealing with Aboriginal and Torres Strait Islander people in remote communities, what are your views on the steps that superannuation funds should be taking to assist those members and other vulnerable members?---I think step number 5 1 is to understand who your member is. When the opportunity presents to go to a community, take it. Like, if ASIC knocks on your door and says, "I want to go to a community, come with us", do it, because the amount that you learn in two or three days about what your members' needs are is amazing. There are also a lot of people already on the ground, like counsellors, ICAN, First Nations Foundation. A lot of 10 people are already working so reach out to them and offer some assistance, and what you can do. I would say understanding your members is probably your main – Is that
- - -

Yes. And in your view does the superannuation industry do enough to ensure that 15 funds are acting in the best interests of their Aboriginal and Torres Strait Islander members in remote communities and other vulnerable members?---I think the funds can do more, but I think it's because they just don't know. I think – like I said, going out to a community changed my whole – I thought we did everything for members and I thought we treated all our members equally. Going out to the community made 20 me see how hard life is, and how equal isn't the same for everybody. So nothing replaces talking to your members. But I think funds have that in their DNA to do that. That's because every time I've spoken to a fund or every time I've spoken to a group, people always walk away going – working out what they can do, how they can work. What I would say to everybody, just make a start. Just do something. 25 Grab your lost super accounts list, look at your postcodes, just make a start.

And is there anything special about QSuper which means it has been able to engage with its members in these communities in the ways that you've described that means that that's not possible for other superannuation funds?---Well, I think QSuper is 30 special but I might be biased about that. And QSuper is very member-focused, always has been member-focused. I don't see why what we're doing is so special that other funds can't be doing it as well, to be honest.

Thank you, Ms Melcer. I have no further questions. 35

THE COMMISSIONER: Thank you, Ms Orr. Mr Kelly, have you got anything.

MR KELLY: No.

THE COMMISSIONER: Thank you very much, Ms Melcer, you may step down 40 and you are excused?---Thank you.

45 <THE WITNESS WITHDREW

[10.54 am]

MS ORR: Commissioner, perhaps if we could take a break until 11 to allow for the next - - -

THE COMMISSIONER: Perhaps five past.

5

MS ORR: Yes, thank you, Commissioner.

THE COMMISSIONER: 11.05.

10 MS ORR: Yes, thank you.

THE COMMISSIONER: Yes. I will resume sitting at 5 past 11.

15 **ADJOURNED**

[10.54 am]

RESUMED

[11.05 am]

20

THE COMMISSIONER: Mr Hodge.

MR HODGE: Commissioner, the next witness is Andrew Hagger.

25 THE COMMISSIONER: Is Mr Hagger in the room?

MR HODGE: Yes, Commissioner.

30 **<ANDREW PAUL HAGGER, RECALLED AND RESWORN**

[11.05 am]

<EXAMINATION-IN-CHIEF BY MR THOMAS

35

THE COMMISSIONER: Thank you, Mr Hagger. Do sit down. Yes, Mr Thomas.

MR THOMAS: Is your full name Andrew Paul Hagger?---Yes.

40 And is your business address 700 Bourke Street, Melbourne, Victoria?---Yes.

And you are currently the chief customer officer, Consumer Banking and Wealth at the National Australia Bank?---Yes.

45 In your role as chief customer officer you report to the group CEO?---Yes.

And you were appointed to that role in August 2016?---Yes, I was.

Are you able briefly, Mr Hagger, to identify your main responsibilities as chief customer officer?---As chief customer officer I have accountability over the retail bank, so that's our branches around Australia, the mortgage broking area. So engagement with mortgage brokers, all NABs contact centres, call centres, that take 5 millions of calls per year, the financial advice area, and overall NABs workings then for six – approximately six million retail customers.

Thank you, Mr Hagger. In your role as chief customer officer are you responsible for NABs superannuation business?---No, I'm not.

Thank you. Now, from April 2013 to July 2016, you were group executive, NAB Wealth?---Yes.

And in that role, did you have management responsibility for NABs superannuation business?---Yes, I did.

Thank you. Now, prior to that, from October 2011 to March 2013 you were the group executive of People, Marketing and Communications?---Yes.

And from October 2010, you have been a member of NABs Executive Leadership Team?---Yes.

You're also a director, Mr Hagger, of National Wealth Management Services Limited?---Yes.

Can I ask this: notwithstanding your lack of responsibility for NABs superannuation business in your role as chief customer officer, did you retain any responsibility with respect to plan service fees after August 2016?---Yes.

And what was the nature of that responsibility, Mr Hagger?---Well, we had the changeover of responsibilities as of 1 August amongst the – sorry, amongst the executive leadership team inside NAB. And in relation to – there were two events in relation to plan service fees involving non-linked advisers, and one related to TERP and the other one related to SWiFT and Encompass, and I agreed with Antony Cahill 35 who was the group executive newly taking responsibility for superannuation, that I would carry forward those two matters because they were still under review and in discussions with ASIC which I had already begun.

Thank you. And just to clarify those two events, are they events notified to ASIC on 40 24 December 2015 and - - -?---Yes.

- - - 14 December 2016?---Yes.

Thank you. Now, on Friday, 10 August, you received a summons to appear before the Commission?---Yes.

Do you have the original of that summons with you?---Yes, I do.

I tender the summons, Commissioner.

THE COMMISSIONER: Exhibit 5.145, summons to Mr Hagger.

5

EXHIBIT #5.145 SUMMONS TO MR HAGGER

MR THOMAS: And finally, Mr Hagger, have you received a request to provide a
10 written statement for this round of the Commission's hearings?---No, I haven't.

Thank you. No further questions, Commissioner.

THE COMMISSIONER: Yes. Yes, Mr Hodge.
15

<CROSS-EXAMINATION BY MR HODGE [11.09 am]

20 MR HODGE: Thank you, Commissioner.

Mr Hagger, the Commission is hoping that you can assist it with a couple of matters.
And the first concerns the dealings that you had with ASIC in October of 2016. So
to help you put this in context, we might just have a look at some documents. Can
25 we bring up NAB.047.007.5472?---Mr Hodge, is it possible for me to have any hard
copies? I can't, I will obviously use the screen but it would be easier for me to help
if I had a hard copy, if they're available.

MR THOMAS: I'm in the Commission's hands. We will have copies of almost all
30 of the documents that would be put to Mr Hagger, and if it would assist him and the
Commission I would hope to hand copies to your Honour's staff member.

THE COMMISSIONER: It can be handed to the associate and - - -

35 MR THOMAS: Thank you.

THE COMMISSIONER: - - - accordingly through the course of the examination
Mr Hagger may have access to them.

40 MR THOMAS: I am grateful to you, Commissioner.

THE COMMISSIONER: Can they be provided to the associate, please.

THE WITNESS: Thank you, Commissioner.
45

MR HODGE: Mr Hagger, this is a chain of emails where you will see at the bottom of the first page there is an email from Ms Debenham to a number of people, including you, sent on 26 September 2016?---Yes.

5 And then at the top of the page is an email sent on 19 October 2016 by Ms Debenham to a number of people, including you?---Yes.

And you will see the email on 19 October 2016 begins by explaining that:

10 *ASIC is about to release its report on incorrect charging of adviser service fees.*

?---Yes.

15 Can I ask, have you reviewed this document over the course of the weekend, in the course of preparing to give evidence today?---Yes, I looked at – I looked at a lot of documents over the weekend, Mr Hodge, but included this one.

20 Thank you. And you will see that the issue that Ms Debenham is raising is how the details in relation to PSF events are to be communicated to ASIC?---Yes. I – I think what she’s raising here, Mr Hodge, is that we knew ASIC was doing a report on ASFs, but I think by the time she wrote this email she was saying she had now had confirmation from ASIC that the ASF report would definitely disclose details of the TERP PSF breach.

25 That’s right. It’s going to deal with the TERP PSF breach and it’s unclear whether or not it will deal with the SWiFT and Encompass PSF - - -?---Correct.

- - - events?---Yes.

30 And the TERP PSF breach was the breach that was notified to ASIC on 24 December 2015?---Yes, it was.

35 And the SWiFT and Encompass PSF events were notified to ASIC on 14 September 2016?---They were breach notified, then they were raised with ASIC prior to that.

You had previously – you personally had previously told ASIC that you were investigating - - -?---Yes.

40 - - - the issue in relation to SWiFT and Encompass?---Yes.

And then the breach notifications were given on 14 September 2016?---Correct.

45 And the issue that she is specifically raising – and we can see this about halfway through the email with the word “specifically” is:

Specifically, I would like to get agreement and instruction on whether we intend to pre-emptively communicate about –

And there's four bullet points?---Yes.

5

And one is:

TERP PSF event and associated remediation.

10 ?---Yes.

Or:

All PSF events and associated remediation.

15

?---Yes.

Or:

20 *Project Rio in total.*

?---Yes.

Or:

25

None of the above.

?---Yes.

30 Can you just explain to the Commissioner what Project Rio was?---Project Rio was that in – I think about June 2016, Mr Hodge, ASIC had indicated to us that they wished to pursue either an enforceable undertaking or licence conditions in relation to a number of matters. I think that has been the subject of discussions previously in this round, and so Project Rio was the work that was pulling together the assurance review and other matters around that. And at that time, of course, we were still in
35 discussions with ASIC about those matters but we didn't know whether – or I think what was being discussed here was whether to pre-emptively communicate to – you know, by way of media release, or whatever, that, you know, that licence conditions, etcetera, were being discussed, but they hadn't yet been finalised.

40

You hadn't – ASIC had indicated that its preference was for an enforceable undertaking?---Well, by this date – at the beginning they had said that they were satisfied either with an enforceable undertaking or licence conditions. I think by the time of this email, the – it had come down to licence conditions.

45

They had said that they would prefer an enforceable undertaking at the beginning, hadn't they?---I – it would be good to go to the – I can't remember the exact

wording, Mr Hodge, but what I recall was they said that they felt something was appropriate. They wrote a fair bit about enforceable undertaking and the steps involved and said we would also be satisfied if it was licence conditions. I think – I think that has been discussed.

5

NABs preference was for licence conditions?---Well, ultimately, both enforceable undertaking and licence conditions were discussed, and ultimately, the – and both had their advantages and disadvantages, but ultimately, the proposed approach was that the – the agreed approach was licence conditions.

10

NABs preference was for licence conditions?---I think NAB was open to both, depending on discussions with the trustee. As – as I recall it – as I recall it, NABs preference – well, there were differing views, actually. But – but ultimately, the trustee preferred licence conditions, and I think for NAB that – that was a good outcome, too.

15

NAB Wealth preferred licence conditions?---Yes, I'm just trying to recall the - - -

You're not sure?--- - - - sequence of – I'm not sure but I know that we were satisfied at the end that licence conditions was – was appropriate.

20

Do you recall that the view was that licence conditions would be less likely to attract adverse publicity than an enforceable undertaking?---I think that was one of the factors, yes.

25

Now, then you see the second last paragraph says:

To be clear, I'm not necessarily proposing that we should communicate preemptively. Rather, I wanted to flag that if we go down that path I will need to engage ASIC as soon as possible. Whichever way it falls, we might need to consider how this lines up with EOY results announcements.

30

?---That's right.

And that's end of year results announcements?---Yes.

35

And that's because NAB was about to announce its full-year results - - -?---Yes.

- - - for the financial year that had just concluded?---Yes.

40

I tender that document, Commissioner.

THE COMMISSIONER: Emails between Debenham, Hagger and others, 26 September and 19 October '16, NAB.047.007.5472, exhibit 5.146.

45

**EXHIBIT #5.146 EMAILS ENTITLED ASIC ASF/PSF REPORTING
BETWEEN DEBENHAM, HAGGER AND OTHERS, 26 SEPTEMBER AND
19 OCTOBER '16
(NAB.047.007.5472)**

5

MR HODGE: Now, then, you then had an exchange of emails on 19 October with Mr Brown, and I will bring that up. Can we bring up NAB.047.001.2628. You see this is a chain of emails on 19 October, later in the day?---Yes.

10

And you see it forwards, at the bottom of the page, a lengthier email – another email from Ms Debenham?---Yes.

And you're forwarding it to Mr Brown?---Yes.

15

Mr Brown was the EGM for investor relations?---Yes.

And you were saying to Mr Brown, "I will brief you tomorrow about this issue."?---Yes.

20

And, again, did you review this document in the course of preparing to give evidence today?---I saw it briefly last night, yes.

Thank you. I tender that document, Commissioner.

25

THE COMMISSIONER: Emails of 19 October '16, Hagger and Brown, concerning ASIC advice service fee report, NAB.047.001.2628, exhibit 5.147.

**30 EXHIBIT #5.147 EMAILS DATED 19/10/2016 HAGGER AND BROWN,
CONCERNING ASIC ADVICE SERVICE FEE REPORT (NAB.047.001.2628)**

MR HODGE: And then can we bring up NAB.162.017.2128. This is already exhibit 5.30?---Thank you.

35

Now, the email at the top of the page is – or the two emails at the top of the page are not emails that you were on, but you see about a third of the way down the page an email begins from Mr Owens?---Yes.

40

And that's sent on the morning of 20 October 2016?---Yes.

Mr Owens is from Corporate Affairs?---Yes.

45 You see the email is sent to you?---Yes.

And Mr Owens is making a recommendation, which is that there be open and transparent dealings with customers, stakeholders and ASIC?---Yes.

5 And in particular, his recommendation is to reveal that the estimate now for remediation is in the order of \$34 million?---Sorry, can you repeat that question, Mr Hodge?

In particular - - -?---Yes.

10 - - - his recommendation is to reveal the total remediation amount that is estimated?---Sorry, I'm just – perhaps I need to read the whole document. I am just reading that he assumed that NWMSL and the trustees would accept management's recommendation. Sorry, can you just show me the – where he recommends - - -

15 Yes. Did you review this document in the course of giving evidence today, Mr Hagger?---I am not sure whether I did.

All right. If you look, you see option 1 three-quarters of the way down the page?---Yes.

20

Continuing:

25 *Our preferred option would see NAB proactively announce all aspects of the PSF issue including customer numbers and the total remediation amount. Corporate affairs also recommends that we should flag our intention to conduct an assurance review.*

?---Yes, I see that.

30 And you understood that that would involve revealing to ASIC the full amount of remediation that was estimated?---Yes, that would.

And it would involve revealing to the public the full remediation that was expected?---Under that approach, yes.

35

And you see Mr Owens also says slightly up the page:

NWMSL and the trustees –

40 I'm sorry, it says:

We have assumed NWMSL and the trustees will accept management's recommendation to remediate in full the TERP, Encompass and SWiFT events with approximately \$34 million in remediation provided to 220,000 members.

45

?---Yes.

And you were aware at this time, that is on 20 October 2016, that this was the recommendation of management?---Of NWMSL on the 20th – I’m not sure, Mr Hodge.

5 You think the first time you found out that management was going to make this recommendation was when corporate affairs sent you an email on - - -?---No, no, I’m not saying that, Mr Hodge. I’m just trying to recall the sequencing.

The decision as to what recommendation was going to be made was a decision made in consultation with you?---Yes, yes. No, I – I fully understand that, Mr Hodge. I’m just – this is – I’m just trying to get in my mind – this is the Thursday, 20 October.

Yes?---And the NWMSL board was meeting the following week.

15 On Monday?---On Monday.

Yes?---That’s correct. And I – I’m just not sure of the juxtaposition of – of – of that, but I – but the board paper – I don’t know, I can’t remember when the board papers went out for NWMSL but I was aware somewhere over those – I don’t – maybe I’m trying to get pedantic about a day here or a day there because there were some shifts occurring during that week but, you know – as you know, we agreed to remediate in full. I just can’t remember whether I knew that on the Thursday or – or before that we were taking that to the NWMSL board.

25 The decision as to what was to be taken to the NWMSL board - - -?---Yes.

- - - was a decision that you would have approved before it was taken?---Yes.

Is that right?---Sorry, Mr Hodge, please understand I’m not in any way questioning any of that. I’m just trying to remember time-wise when I had – when I had done that.

I understand. I want to make sure that we are agreeing about this, that whatever recommendation it was that management had settled on it was a recommendation that would have been done with your agreement?---The recommendation to the NWMSL board, yes.

That’s right?---Yes.

40 And so if Mr Owens knows on 20 October 2016 what the recommendation is going to be, it must be the case that you would have already known what the recommendation would be?---That – that’s probably right, Mr Hodge.

45 Because you would have approved it before it was made?---Yes. I understand what you’re saying. I just can’t remember the precise sequencing of that week, Mr Hodge. I’m sorry that that’s coming across in a – in a disjointed way but during the course of

that week, it is true that I approved a recommendation to the NWMSL board. I just can't remember the sequence of which day is which there.

5 Now, then, on 21 October, the next day, ASIC provided a draft of the report to NAB. I can bring up that document if it would help. Can we bring up NAB.158.006.5028. That is also, Commissioner, already an exhibit, along with its attachment. So the email is exhibit 5.31 and its attachment which we will look at in a moment, is exhibit 5.32. So you can see, Mr Hagger, on the bottom of the screen an email from Ms Macaulay of ASIC emailing to Ms Hopwood and Ms Debenham of NAB a copy of
10 the draft report?---Yes.

And then if we bring up the attachment which is exhibit 5.32 which is NAB.158.006.5030?---Thank you. So we're on to another - - -

15 I think they're bringing over a copy of the draft report to you now, Mr Hagger?---Thank you.

So this is the draft report. And if you go to page 24 of that draft report which is .5053?---Yes.

20 You will see there table 4:

Estimated further compensation as reported to ASIC as at 31 August 2016.

25 ?---Yes.

Now, do you know how the \$11.7 million came about?---Yes. That – well, that relates to the TERP PSF event matter.

30 That was the most recent estimate that had been given by NAB to ASIC about the full amount of remediation for TERP?---I – I'm not sure. It would – because I can't remember whether we gave them the – any updated number to that but that – that's the number that ASIC obviously had at the time that they were sending to us saying is that the right number as at 31 August.

35 But the number would have come from NAB?---In the first place, yes.

40 And whose responsibility is it within the NAB Group to update ASIC as to the amount estimated for remediation where that remediation is going to be paid by the trustee?---Well, typically, the communication with ASIC occurs either through regulatory – well, particularly through regulatory affairs, and from time to time when there's – when we're not talking estimates but there's, you know, a particular paper going forward it will, if it's the trustee, be signed by the trustee.

45 Does regulatory affairs sit within NAB Wealth or within the entire NAB Group?---It doesn't sit inside NAB Wealth, it sits inside the risk – the independent risk function of NAB.

When a breach notification is given on behalf of the trustee - - -?---Yes.

- - - to ASIC?---Yes.

5 Who makes the determination as to whether there is a significant breach?---I'm – I'm not on the breach review committee for the trustee, so I'm – I'm not sure who makes that decision but it's not – not anything I'm involved with.

10 Do you know that the trustee doesn't have its own breach committee?---I – I believe what happens is there is a breach review committee which the office of the trustee is on, and the breach review committee of Wealth is chaired by Damian Murphy who is the CRO or the chief risk officer for Wealth and the chief risk officer for the trustee.

15 If we just take that in steps?---Sure.

There's a breach review committee within NAB Wealth?---No. The breach review committee - - -

20 There's a breach review committee for NAB Wealth?---Yes.

And a representative of the office of the trustee sits on that committee?---Yes, I believe so.

25 And that committee makes the determination as to whether there is a significant breach for the trustee?---I – I believe – well, I know how it works for – from a management perspective. I'm not sure what – exactly how it works for the trustee, Mr Hodge.

30 How does it work from a management perspective?---The breach review committee meets and the – and if the breach review committee decides that there is a significant breach, then a breach notice is then prepared and sent to ASIC. So the decision is being made by the breach review committee, to answer your question squarely.

35 And signed by the chief risk officer?---Yes, as chair of the breach review committee.

And then subsequently, there will be a notification given to the board of the trustee that this has occurred?---Well, in relation to the trustee, what I'm not sure, Mr Hodge, from my perspective - - -

40 You don't know what the process is?--- - - - I'm not involved – I don't know whether there is something additional around the trustee process.

I understand. And when there are updates then given to ASIC - - -?---Yes.

45 - - - those updates are done by whom, do you think?---Well, there's both formal and informal updates to ASIC from time to time. So typically updates will be through the regulatory affairs unit, and it's really to them that the working team inside ASIC

often reaches out. So there will be things initiated inside the – the NAB Group from time to time, and there will be times that ASIC contacts – typically the regulatory affairs team but it can be whoever they want to reach out to for information.

5 It's not left to the trustee or the office of the trustee to update ASIC as to amounts of remediation that are estimated?---In – do you mean in relation specifically to trustee matters or do you mean more broadly?

10 No, I mean in relation to trustee matters, specifically?---Well, typically, the trustee, you know, has its own communication mechanisms with ASIC, and in addition, from time to time if it's appropriate, then management can also provide those updates in – in consultation, typically, with the trustee.

15 All right. We will return to that. So you see, Mr Hagger, on this page we're looking at, that there are five NAB entities that are identified as having estimates of future compensation?---Yes.

And four of those are financial advice licensees of NAB?---Yes.

20 And one of them is MLC Nominees?---Yes.

Which is one of the trustees?---Yes. So MLC was – sorry, MLC Nominees was an AFSL licensee through that period when the PSFs were created.

25 And also one of the trustees?---I'm not sure about that.

Well, this estimate of compensation is in relation to the deduction of PSFs?---Yes.

30 And that was deducted by the trustee?---Yes. The only reason why I'm hesitating in my mind, Mr Hodge, is that NULIS, from a particular date, had become the single trustee.

And then if we go back a page, or two pages to page 22 to .5051?---Yes.

35 We see table 2 where NABs – the NAB Group estimates in relation to compensation show that the group as a whole has paid three and a half million dollars or agreed to pay three and a half million dollars, that its estimated future compensation is \$12.7 million and therefore its total is \$16.2 million?---Yes, I see that.

40 And the \$12.7 million includes the \$11.7 million in relation to the TERP PSF issue?---Can I just look at this a little closer for a moment, Mr Hodge.

Yes?---I see. So it looks to me, Mr Hodge, that table 2 - - -

45 Yes?--- - - - is a consolidation of table 3 and table 4.

That's right?---So the – your question was does the 12.7 million include the 11.7 million, and I think the answer to that is yes.

5 All right. And so on that basis then, the total estimate for the NAB Group is \$16.2 million?---Yes.

And you see the estimate at the bottom for all of the five groups is a total of 80 to 86 million dollars?---Yes.

10 All right. Now, can we then bring up NAB.044.010.7681. So you see at the bottom of the page is an email from Mr Goonan to Mr Thorburn?---Yes, I see that.

And it's copied to some other people?---Yes, it is.

15 And then you see that the email that Mr Thorburn has received is forwarded to you and Mr Cahill?---Yes.

20 So by this time, as I understand it, you're saying you are no longer responsible for the superannuation business, Mr Cahill is responsible for the superannuation business?---Yes.

And Mr Thorburn, on that Saturday afternoon, is asking if he can please discuss this with the two of you on Monday when you meet?---Yes.

25 And do you recall whether you had a meeting with Mr Thorburn on the Monday?---No, I don't recall.

You're not sure - - -?---I'm not sure.

30 - - - whether it ended up happening. All right. And the document that he is forwarding to you, if we then bring that up is NAB.044.010.7682. And Commissioner, the attachment is already in evidence as exhibit 5.35. You've looked at this document, Mr Hagger, in the course of preparing to give evidence today?---As I say, very briefly, Mr Hodge. I – I know you understand, I was called on Friday, and these matters are some time ago. So I know you're asking me detailed questions. I'm trying my best, but it is - - -

40 You're doing the best you can. I understand. And when you say some time ago, this was, what, 20 months ago. Is that right? 22 months ago. A little under two years?---Yes.

45 You're not saying you have no recollection of any of these events?---No, I'm not – well, that's why I'm trying to answer your questions. I'm just trying to give you a sense, and I think it was probably apparent at the beginning when I described my role, you know, there's a substantial amount of documents, there is a substantial amount of issues. So I'm doing my very best to answer your questions, but where I

don't have full or precise understanding or haven't had time to refresh my knowledge, you know, I need to say that because I think that helps.

5 All right. Well, you just tell us if there's something that you haven't had the opportunity to refresh your memory about and need time to think about?---Thank you.

10 So if we look at the document, we see this is what's described as the Project Rio Issue Summary. Do you see at the top?---Yes.

Do you know who prepared the document?---No, I – I think you said it was an attachment to Nathan Goonan's - - -

15 Yes?--- - - - email so I assume it was prepared by Nathan Goonan but I would be speculating.

Would you would have reviewed it before it went to Mr Thorburn?---I don't think so.

20 You think it just went to Mr Thorburn without you having looked at it first?---Yes. I noticed I wasn't on the list, that may be wrong but that's my understanding. That's my recollection.

Well, let's have a look at some parts of it. You see the first bullet point is:

25 *ASIC has provided NAB with a redacted copy of its adviser service fees report which it intends to issue late next week.*

?---Yes.

30 And "late next week" is identified as 26, 27 and 28 October?---Yes.

That would be the Wednesday, Thursday or Friday of the following week?---If – if that's what it was, Mr Hodge, I accept that.

35 And you already knew that the document was expected to be issued late in the following week because Ms Debenham had emailed you and told you that?---Yes.

And you see it then says:

40 *We were originally expecting that ASIC would not be prepared to announce NABs PSF issues until late November/early December when it also announces NABs assurance review and licence condition.*

?---Yes.

45

And is that statement consistent with what you recall you believed at the time, that is, you thought that the PSF issue wouldn't be announced until later in the year?---So I think there's two parts to that question, Mr Hodge. Can you just repeat the question.

5 Yes. I will just take the second part. Do you recall that you thought at the time
- - -?---Yes.

- - - that the PSF issue would not be announced by ASIC until later in the year, that
is, before you received the - - -?---Yes.

10

- - - draft report. All right. And then you see it says:

The redacted report indicates –

15 And there's a series of sub-bullet points?---Yes.

And it notes the things that you and I have already noted in the draft report in the last
bullet point, which is:

20 *NAB is named to have a total exposure of compensation of \$16.2 million to
approximately 120,000 customers.*

?---Yes.

25 And:

*While we can't see the other banks' compensation details, this probably means
that NAB is "middle of the pack".*

30 ?---Yes.

And that's based on the total expected compensation being 80 to 86 million dollars
as we've already seen?---Yes, on table whatever it was, 4.

35 And do you recall that by 22 October 2016, that is the Saturday, that you understood
that based on the numbers presently contained in ASIC's report, NAB would probably
be middle of the pack?---Yes.

40 And then you see there's another heading which is Background to the PSF
issue?---Yes.

And the third last bullet point under there is:

45 *Remediation has not begun for PSF as we have been attempting to resolve
legal differences of opinion.*

?---Yes.

Continuing:

The most likely remediation will be to approximately 220,000 members for approximately \$34 million across TERP, SWiFT and Encompass.

5

?---Yes.

10 And the legal differences of opinion were because NAB Wealth had raised an issue as to whether or not there was an obligation on it to refund all of the amounts of the PSF?---No, that's not fully accurate.

15 Why do you think the issue had arisen?---Well, the issue had arisen because the – in both a management sense – a trustee sense and a legal sense we were trying to solve three issues during that period, disclosure, entitlement and remediation. I think you were just mentioning about remediation and Wealth and what was going on was more multifaceted than that.

I want to just make sure I understand the evidence you're giving about this?---Yes.

20 You know that in April of 2016 – so that is six months earlier – the trustee had approved full remediation to the TERP members?---I don't remember that, Mr Hodge.

25 Do you know that at some earlier stage the trustee had approved full remediation to TERP members?---I don't remember that, Mr Hodge.

30 At some – do you remember that at some point in time somebody raised a question as to whether or not it was necessary to make full remediation to the TERP, Encompass and SWiFT members?---Yes. Perhaps – perhaps it's best for me to explain, because this is, in terms of my role, I first began to be involved in about June, Mr Hodge, and that was at the time that having – there having been a review in relation to TERP, the matter was then raised as to whether SWiFT and Encompass had similar issues, and that's where we approached ASIC and said, "Well, actually, we need to stand back and let a review be – ensue looking at TERP, SWiFT and Encompass, and that then involved legal work, involved – well, an amount of activity within the trustee and within management in order to solve those questions about disclosure, entitlement and remediation.

40 What is the disclosure issue?---The disclosure issue was getting to – disclosure and entitlement, those two issues were about getting to the characterisation of – of the fee and its entitlement to be in the hands of MLC. And so the disclosure questions that came up were, firstly, as it related to disclosure of the trustee to members and, secondly, the disclosure as it related to the – between MLC and the management team back in 2012, and the trustee.

45

And those issues are relevant – the issues of disclosure are relevant to the entitlement of MLC to retain the PSFs?---Ultimately, yes, they were.

Were they ultimately relevant at this time to any issue other than whether or not MLC can retain the fees?---Sorry, let me understand that again. Are they ultimately
- - -

5 Are the issues of disclosure - - -?---Yes.

- - - at this time, that is in 2016 - - -?---Yes.

10 - - - relevant to any issue other than whether or not MLC can retain the PSFs?---I'm not sure but the – the main part that I was involved with was in relation to those three issues that I talked about, disclosure, entitlement and remediation, and with a particular view to what is the appropriate remediation in relation to TERP, SWiFT and Encompass.

15 And let me show you a document. Can we bring up – this is the trustee board's resolution in April of 2016. So this is NAB.005.562.1931.

THE COMMISSIONER: Give the number again, Mr Hodge.

20 MR HODGE: Yes, Commissioner. NAB.005.562.1931.

THE WITNESS: Mr Hodge, if it saves time if you're about to show me that there was a trustee resolution back in April that is – that is in the records, then I'm prepared to accept that a resolution was made. I – in answering your question earlier,
25 I didn't know whether a resolution was made or not.

MR HODGE: Yes. What I want to suggest to you is this: there is no reason why the trustee would want to do anything other than fully remediate its members?---I – I don't necessarily – well, I don't agree with that proposition.

30 What reason can you think of for why the trustee, acting in the best interests of its members, would not want to fully remediate them?---Well, the trustee has a duty to work through what the appropriate remediation methodology is. Otherwise, if you took what you just said to its extreme conclusion, the trustee would never take any
35 money from – accept any money from members.

In this - - -?---Or any money it ever received, it would give back.

40 Mr Hagger, in this case - - -?---Yes.

- - - the issue was, on its face, quite simple, wasn't it? Let me put these things to you?---It certainly was not simple, Mr Hodge.

45 You didn't make it simple. Let's deal with why that was?---No. No, it's not anything to do with me, Mr Hodge. It was not a simple matter.

The plan service fee was a fee agreed between an employer and an adviser.
Agreed?---Yes, yes.

5 For services to be provided by the adviser?---Well, that became part of the
discussion, but yes.

10 That was an issue that became part of the discussion when NAB Wealth raised that
issue?---Well, it was an issue that the trustee and – in the period I was reviewing it,
there was activity within the trustee and there was activity within management on, as
I say, disclosure, entitlement and remediation.

When you say “within the trustee on this” - - -?---Yes.

15 - - - what do you mean by that? What is the activity of which you were aware within
the trustee on this issue?---The trustee was obtaining legal advice, the trust – the
office of the trustee, and I think there’s about 10 people in the office of the trustee, a
number of those trustee representatives were turning their mind further to this, and –
and doing work. The – the chief risk officer of the trustee was doing work in relation
20 to this. So there was an amount of activity at the time to work through what, from
my perspective, and remembering my role, but from my perspective it was a complex
issue.

25 The trustee was getting legal advice and working through an issue because an issue
had been raised by NAB Wealth?---I – I don’t know who raised it in the first
instance. What I remember was that TERP had been reviewed. I think you
mentioned earlier, Mr Hodge, back in December 2015 there was a breach notice in
relation to TERP. The matter of TERP had been worked through to a period around
– well, I think you just said April for the resolution. What I recall is by the time I
30 began to get involved in June, the – the approach was then to look at TERP, SWiFT
and Encompass to say is there anything that we can learn from the TERP matter that
would help inform us as to whether we have issues on SWiFT and Encompass, and
secondly, in relation to that investigation, will it help shed any light back on the
matter relating to TERP.

35 Mr Hagger, to help you, let me show you a series of documents. Can we bring up
NAB.047.001.3877. This is the original breach notification given on 24 December
2015 in relation to TERP. Did you review this over the course of the
weekend?---Very – I will give you the same answer to all those questions, Mr
Hodge. There’s some things I saw just very, very briefly.

40 If we go to page 4 of that document, .3880, you see there’s a section which is
description of why breach is significant?---I see that.

45 And number 2 is:

The analysis to date indicates that approximately 47,000 members have been impacted by the administrator's action in implementing and administering the accounts of transferring members.

5 ?---Yes, I see that.

And then if we go over the page to page .3881, you see:

10 *The current high level analysis indicates that a total of approximately \$4 million was deducted from the accounts of transferring members without an adviser and retained by the administrator. The fee may increase or decrease after further analysis is completed.*

?---I see. In fact, to my understanding the figure of the number of members soon increased to – well, I think you showed me the table, 96,000.

It doubled?---And the compensation improved – yes, improved to 12.7 million.

20 And - - -?---Plus interest.

- - - we go to page .3883. This is signed by the chief risk officer?---Yes, I think I mentioned earlier the chair of the breach committee.

25 Do you agree that the trustee had not passed any resolution to approve a remediation plan at this time, on 24 December 2015?---Yes.

30 Do you agree that there is nothing that stopped NAB at this time from making an estimate of compensation, notwithstanding that there had been no remediation plan passed by the trustee?---Well, I think there's – sorry, if we just – it was here a minute ago. I think, yes, the words you were just pointing to:

...actual or potential financial loss to clients of the licensee –

35 sorry, on page NAB.047.001.3881?

Yes?---I think the words you just read to me:

40 *The current high level analysis indicates that a total of approximately \$4 million –*

45 So that's the dimension of the – of the matter. matter. In terms of compensation, at this stage there's a breach being indicated. What happens after a breach being indicated is that then work is carried out to work out what is the dimensions of the issue and the appropriate remediation mechanism and the compensation estimates flow from that.

There was nothing – I’m sorry, I will withdraw that. You agree that as at this date, on 24 December 2015, the trustee had not approved any remediation plan?---Correct.

5 That didn’t prevent NAB from making an estimate on this date of the amount of loss?---Sorry, I thought your earlier question was in relation to compensation. What – what the – happens in the breach report is that the dimension of the issue is – is indicated, so that ASIC has a sense of the size involved.

10 There was nothing that stopped NAB on this date, 24 December 2015, from indicating the dimension of the issue, to use your words, simply because the trustee had not yet approved a remediation plan?---I see. Sorry, I think I’m understanding what you’re saying. You’re saying that NAB is able to write here that this looks like a \$4 million issue notwithstanding that it ends up being a different issue to that. Is that what you mean?

15 Mr Hagger - - -?---Yes.

20 - - - NAB is able to write that there is a \$4 million issue at this date notwithstanding that the trustee has not yet passed a resolution approving a remediation plan. My question is as simple as that?---Yes, correct.

Do you agree with that?---Yes, I agree with that.

25 And then – I tender that document, Commissioner. I tender it because it’s probably in but it’s a little unclear so I tender it.

THE COMMISSIONER: So the breach report of 24 December ’15, NAB.047.001.3877 becomes exhibit 5.148.

30 **EXHIBIT #5.148 BREACH REPORT DATED 24/12/2015 (NAB.047.001.3877)**

35 MR THOMAS: A matter for you, Commissioner, but it may be worth clarifying that that was the breach report issued by the administrator, not the breach report issued by the trustee.

THE COMMISSIONER: The report will speak for itself.

40 MR THOMAS: If the court pleases.

MR HODGE: But that’s fine. Let me make that beyond doubt. Can we bring up NAB.047.001.3884. This is the breach report given on behalf of MLC Nominees. You see that, Mr Hagger?---Yes, I do, Mr Hodge.

45 MLC Nominees is the trustee?---Yes.

If we go to page .3887. You see under 2.5 it contains the identical information from the notice given on behalf of the administrator?---Yes. Is there a copy of this document, please?

5 I tender the document, Commissioner.

THE COMMISSIONER: Breach report MLC Nominees, NAB.047.001.3884, exhibit 5.149.

10

EXHIBIT #5.149 BREACH REPORT MLC NOMINEES DATED 24/12/2015, NAB.047.001.3884 (NAB.047.001.3884)

15 THE COMMISSIONER: The date of the report, Mr Hodge?

MR HODGE: Is 24 December 2015.

THE COMMISSIONER: Thank you. 24.12.15.

20

THE WITNESS: Sorry, Mr Hodge, what was your question in relation to that document?

25 MR HODGE: We were just helping to address your counsel's issue, Mr Hagger?---Sorry. Then I will relax.

Can we bring up NAB.047.002.4643. No, I'm sorry, I've read out the wrong doc ID. It should be NAB.047.006.2838. This is a letter, Mr Hagger, sent by NAB Wealth to ASIC on 25 February 2016. Do you see that?---Yes, I see that.

30

Did you review this document in the course of preparing to give evidence?---No, I don't think I did.

35 All right. If we go to page 2 of that document, .2839. You see this provides an update to ASIC of the number of affected members and the sum of PSFs paid by those affected members?---May I just take a moment, Mr Hodge, to read this document?

40 Yes, Mr Hagger?---Thank you.

THE COMMISSIONER: While Mr Hagger is doing that I am correcting my errors about exhibit 5.148. I gave the wrong doc ID. The system will collapse as a result so I have tried to resolve it.

45 THE WITNESS: Sorry, Mr Hodge, I think I've read most of the document. Perhaps you can begin and if I need a moment more I will test your patience on that.

MR HODGE: Do you see on page 2?---Yes, I do.

Where it identifies the number of affected members and the sum of PSFs paid by affected members?---Yes.

5

And now the number of affected members has risen to just shy of 97,000 and the sum of PSFs paid by affected members has risen to about \$10.8 million?---Yes, I see that.

10 And can I suggest to you that on this date the trustee had still not passed any resolution approving a remediation plan?---I believe that's the case, yes.

I tender that document, Commissioner.

15 THE COMMISSIONER: Letter NAB Wealth to ASIC 25 February '16, NAB.047.006.2838 exhibit 5.150.

**EXHIBIT #5.150 LETTER NAB WEALTH TO ASIC DATED 25/02/2016
(NAB.047.006.2838)**

20

MR HODGE: Then can we bring up NAB.047.006.5395. And can we put that – no, we will deal with this first. You see this is an email from Mr Murphy the chief risk officer to you, Mr Hagger?---Yes, I see that.

25

This is dated 18 June 2016?---Yes.

And is this about the time when you begin to have an active involvement in relation to the PSFs?---Yes, it was around then, Mr Hodge.

30

And - - -?---Thank you.

- - - what Mr Murphy is sending to you is a copy of the quarterly update provided to ASIC for the 30 March 2016 quarter?---Yes.

35

And then if we bring up the attachment to that document, which is NAB.047.006.5400. You see this is the TERP update to ASIC?---Thank you. Yes, you're saying this is a attachment to - - -

40 Yes?---Thank you, Mr Hodge.

This is the attachment to the email that you received?---Yes.

45 And this is the quarterly update, that is for the quarter ending 31 March 2016?---Yes, I noticed that here. I am not sure why it's the 30th and not the 31st but it's not relevant.

And you see in the document at the top it says approximately 97,000 members. That's the number of clients impacted?---Yes.

5 And you can see from what's contained in the breach summary that it's in relation to TERP?---Yes.

And then if we go over the page to page .5401. We just need to rotate that. And you see it explains:

10 *During the course of conducting further analysis, the administrator discovered that the number of members impacted within the scope of the event was significantly larger than the initial estimate. As a result, the number of impacted clients has increased from approximately 47,000 to 96,901.*

15 ?---Yes.

And then it says:

20 *The total incorrectly charged fees are approximately \$11.7 million.*

?---Yes.

Continuing:

25 *And the initial estimate of the compensation amount is approximately \$2.3 million and is based on a 20 per cent loss of earnings from the total PSF deductions.*

?---Yes.

30 And that \$11.7 million, you will recall that's the figure that then appears in the draft of the ASIC report that is received on 20 October 2016?---That – you exhibited that earlier, didn't you?

35 Yes, you had a look at that a little earlier?---Yes. 11.7 million plus interest. Yes, I see that.

So that seems to be where the 11.7 comes from, is this quarterly update?---It could be. Yes.

40 And - - -?---This was 30 – when was this email, June - - -

This is emailed to you in June?---Yes.

45 But it's sending you the quarterly update that has being provided to ASIC for the quarter ending 31 March 2016?---Yes. Yes.

And it's giving an estimate to ASIC of both the total amount of fees deducted and the estimate of the amount of compensation?---An initial estimate, yes.

5 And it's doing that, you can see in the next section, before the remediation plan has been presented to the trustee? You see the sentence in the middle of the next box:

The remediation and communications plan is being presented to the trustee board on 7 April 2016 to request approval to proceed with the remediation of member accounts.

10

?---I see that. So, Mr Hodge, I assume what's happening here is that the – this document has been prepared between 31 March and 7 April.

15 Well, it reflects the position as at 31 March 2016?---It's just because the email is sent to me on June.

In June?---I'm just trying to figure it out.

20 Yes?---Because I haven't seen this before but I assume that's what's happening.

Well, you have seen it before, it was emailed to you in 2016?---Yes, I know what you but I mean I haven't had time to refresh my memory around the document.

25 You understand though that what the document shows is that it is possible for NAB Wealth to both estimate the total amount of fees deducted for the PSFs and estimate the amount of compensation, notwithstanding that there has not yet been an approval by the board of the trustee for the remediation?---Well, it's possible to estimate, Mr Hodge. It's always possible to estimate but estimations can also be wrong, which I guess is evident in here because the initial estimate you showed me was in the
30 December figure was less than this, and – and this was now saying – or this and the previous document, I think, were saying there were now 96,000 customers and 11.7 million of fees, and then the compensation was being worked through.

35 I tender that email and its attachment, Commissioner.

THE COMMISSIONER: Email Murphy to Hagger 18 June '16, NAB.047.006.5395 and attached tables NAB.047.006.5400, exhibit 5.151.

40 **EXHIBIT #5.151 EMAIL MURPHY TO HAGGER AND ATTACHED TABLES DATED 18/06/2016 (NAB.047.006.5395 & NAB.047.006.5400)**

45 MR HODGE: Now, did you know that by July of 2016 the possibility of further breaches in relation to SWiFT and Encompass had been identified within NAB?---Yes, that's when I really first became involved, Mr Hodge.

And – can we bring up NAB.061.004.5885. So you see this is a breach paper and it's to the breach review committee. You don't sit on the breach review committee?---No, I don't.

5 You see it's dated 11 July 2016?---Yes, I do.

And it says date breach was identified 6 July 2016?---Yes, I see that.

And if we go over to page .5888?---Thank you.

10

You see there's an assessment at this stage by management of the number of members affected, the total fees deducted, and the initial estimate of compensation?---I can – yes, I can, Mr Hodge. I'm wondering whether I can just read this for a moment again. Is that all right, Mr Hodge?

15

Yes?---Thank you. Yes, sorry, Mr Hodge. You were questioning me on page 26.

At the top of the page are the estimates, which you can see are for TERP. That's apparent from the preceding page which you've looked at. Can we bring up both pages, both the page .5888 and also the page .5887?---Yes. So Mr Hodge, that's estimating the total financial impact.

20

That's right. So there's an estimate for TERP. That's at the top of the page, 26, and there's an estimate for SWiFT and Encompass, that's at the bottom of the page 26?---Yes.

25

So this is an estimate by management as at 11 July 2016?---Yes.

I - - ?---Of the – yes. Yes, it is.

30

For everything, for TERP, SWiFT and Encompass. Do you agree?---Yes, the – yes, it is for SWiFT, Encompass and TERP, yes.

I tender that document, Commissioner.

35

THE COMMISSIONER: Breach paper 11 July 16, NAB.061.004.5885, exhibit 5.152.

40 **EXHIBIT #5.152 BREACH PAPER DATED 11/07/2016 (NAB.061.004.5885)**

MR HODGE: By then you had already met with Mr Tanzer once in relation to the PSF issue?---Yes.

45

If we bring up ASIC.0036.0001.2898. We will just get an unredacted copy handed to you, Mr Hagger?---It looks very heavily redacted, Mr Hodge.

It is very heavily redacted. It was heavily redacted by NAB on the basis of without prejudice privilege, Commissioner. Unfortunately, for whatever reason, the unredacted version has not made it into the court book. Notwithstanding that, as I recall, you have already ruled on that. In any event, Mr Hagger, you can see there's
5 a letter dated 22 July 2016 from National Wealth Management Services Limited to Mr Tanzer?---And from NULIS, yes.

Yes. It's – at the top of the page, though, the letterhead it's on is NWMSLs letterhead?---Yes, I can see that. I'm just pointing out the signatories were myself
10 and the chair of NULIS.

When you go to page 7, you and Ms Smith have signed it?---That's exactly right.

And when you go to page 4 of the document, you see in subparagraph (c) at the top
15 of the page:

Compensation methodology.

Where you are saying:
20

We are considering the right compensation methodology for these members.

?---Yes.

Continuing:
25

And this methodology should appropriately reflect any potential legal liability position.

?---Yes, which we are working through at the moment, yes.
30

That was the issue being raised, we've talked about already, where the question had arisen: is it possible for NAB Wealth to retain these fees, notwithstanding that there was no linked adviser?---The – perhaps the best way to characterise it is that work
35 was proceeding, Mr Hodge, to go through those three issues that I mentioned earlier, disclosure, entitlement, and remediation.

Because they go to the question: is it possible for NAB Wealth to retain these fees, notwithstanding that there is no linked adviser?---Well, that's one of the questions.
40

That's the only question in every case, isn't it?---No, it's not the only question.

What is the other question?---Well, one of the questions is what is the characterisation of the – of the money that has flowed to MLC.
45

Because that affects whether it is possible for NAB Wealth to retain the fees notwithstanding that there is no linked adviser?---Yes, that – that is true, Mr Hodge.

5 The reason why I'm being specific about this, there is interlinkage between disclosure and entitlement and remediation. And your questions keep saying it's only about remediation. But the three were being reviewed because it's important – well, I can't speak for the trustee but it's important to know the nature of the expense that has – where the money has flowed to MLC.

And then you see in paragraph 2.15?---Yes.

10 There's an explanation – sorry, in 2.14 you will see there's a reference to Project SWiFT and Project Encompass?---Yes.

There we go. And there's an explanation that that's currently being reviewed?---Yes.

15 And in 2.15 it said:

We confirm that if our final legal advice concludes similar potential breaches of financial services laws, we have resolved through our breach review committee to notify ASIC of these.

20 ?---Yes.

Continuing:

25 *Similarly if we identify any matters that cause us to reflect on our position regarding the TERP PSF we will raise and discuss these with ASIC.*

30 ?---Yes, and in fact, Mr Hodge, that's entirely consistent, actually, with what I said earlier, which is that we had done the review in relation to TERP, but then said, well, actually, we need to stand back here because we had a product upgrade in relation to SWiFT, we had an intra-fund transfer in relation to Encompass. We should go back and see whether these same issues are present in SWiFT and Encompass. We should work through that and similarly if there's anything about that work that helps inform us about TERP, we should get to the bottom of all of that, leading to the decisions
35 around disclosure, entitlement and compensation.

40 Can we bring up NAB.047.003.2773. This is the breach notice given by MLC Limited which was the administrator. And it was given on, if you go to page 7 of that document, page 2779. It was given on 14 September 2016?---Sorry, 14 September, yes, Mr Hodge.

45 That was the date that ASIC was notified in relation to the Encompass and SWiFT breaches?---Yes, prior to that they were notified of the – of the matter but what's happening here is this is the significant breach notice.

And if we go to page 4 of that document, .2776?---Yes.

We see it identifies at the top of the page the number of member accounts affected?---Yes.

5 And then if we go to page 5 of the document, .2777, you see next to actual or potential financial loss to clients of the licensee include number of clients affected (estimated or otherwise). It says:

10 *Work is currently being undertaken to determine the potential financial loss to unadvised members who were charged the PSF and which was retained by the administrator.*

?---Yes.

15 Now, we've seen, though, already, that two months earlier an estimate had already been made for SWiFT and Encompass members?---Yes.

20 But that wasn't revealed in this breach notification?---Well, I think what you showed me before was a breach paper around the event, and that paper – I don't know – this paper was July 2016, so I don't know what other documents – essential documents are relevant, Mr Hodge, between what happened here and the page you just showed me in September 2016.

25 Do you know why ASIC had not been told what the estimate was of even the amount of fees that had been deducted from SWiFT and Encompass members for unadvised members?---I – I don't know whether ASIC had been told or not, Mr Hodge.

30 Now, you know they hadn't been told because when it comes to the ASIC draft report it doesn't have the figures for SWiFT and Encompass members?---Well, I – I don't think that that's a whole different trail, Mr Hodge, but what ASIC knew was we were looking at SWiFT and Encompass. In fact, by – after this date but between this date and the draft report, I had given an indication to Mr Tanzer of the – of the dimensions of SWiFT and Encompass in roundabout terms.

35 When do you say you did that, Mr Hagger?---I think it was in September but after this report. I had a number of conversations, Mr Hodge, with Mr Tanzer right through between June and – well, until his final day on 30 November, and in one of those conversations – I think it was towards the end of September – but I'm not – not sure exactly which time but I remember saying to him, "You have the number of members, and the approximate dollars involved in terms of the fees is similar, perhaps slightly bigger, per member than the TERP issue."

40 Do you think – is this the evidence you're giving to the Commissioner – that you had already told Mr Tanzer that before ASIC did its draft report?---Yes.

45 And you say, nevertheless, you had some real concern come October with being specific about what the amount was?---No, I'm not saying that.

Why, if you had already told Mr Tanzer in, to use your words, a “roundabout way” what the amount was, did you not have NAB confirm what the figure was when it received the draft report on 21 October 2016?---I see. So, Mr Hodge, what I did was when – there were sort of three phases to this. The first one was quite separately, and
5 in my dealings with Mr Kell, I was aware that the – the advice service fees report was being produced. Then we were advised – I wasn’t advised directly but it was, I think, through the trail that you just showed me from Ms Debenham, that ASIC was intending to include TERP. And so we decided it was appropriate, and I felt it appropriate, as – as a courtesy, to ring Mr Tanzer, which I did, and to tell him
10 actually after quite an amount of work over quite a few months, with ASIC really waiting for us to work our way through it, and they were being patient about that, we were nearing finalisation, and, therefore, whereas the SWiFT and Encompass work had been something that ASIC knew a lot less about than TERP, if he wanted to include it in the report, he could.

15 Now, is this the conversation you had with him on 24 October 2016?---The latter one is. The earlier one that I’ve referred to where I gave him – I said to him, as a – you know, as a guide, the dollar amounts involved are – are – are slightly – at or a bit higher than the TERP matter, that was the previous conversation – or one of the
20 previous conversations. We had several.

The conversation that you’ve just given evidence about, which is one where you told him if they wanted to include Encompass and SWiFT in the report they could, is that the conversation that occurred on 24 October 2016?---It was around about that date.
25 I – I have a file note which perhaps we could go to, Mr Hodge.

Yes. Let’s go to your file note. Can we bring up NAB.047.001.1728. This is the file note you’re talking about?---Yes, it is.

30 And did you send this as soon as you had finished the conversation with Mr Tanzer?---Pretty much, yes.

All right. So you had the conversation with him, typed this out and then sent it off to Ms Debenham, Mr Miller, Mr Daly, Mr Carter, Mr Murphy, Mr Cahill, Ms Binny
35 and Mr Gall. Is that right?---Yes.

All right. So it must have been a conversation that occurred on the morning of 24 October 2016?---Yes, it was. It was very fresh – I – I checked over the weekend and I saw in my diary that the conversation was set for 10.30, so this was very fresh in
40 my mind when I wrote this note. The – the note may not include everything we talked about, but – but it was very fresh when I summarised the key points.

All right. And you remember the conversation now?---I don’t remember all the – everything about it, but I – I remember that we – well, I remember these matters
45 here. I don’t remember everything about the conversation.

All right. But you remember what’s set out here?---Yes.

And you say you told him that if he wanted to include SWiFT and Encompass in the report, he could?---Yes.

5 And is that recorded somewhere in the file note?---Let me just look at the file note for a moment, Mr Hodge. Yes. Here in – about a third of the way down:

If the report was coming out later, in say a week or two, this could potentially be included, though I don't want to front run those board discussions.

10 I see. What you told him was if they were to delay the report, then it might be that you would have a final position on the PSFs?---Well, what I was saying was if – we had been given a range of dates that they may bring out the report. Sometimes that happens, Mr Hodge. ASIC will say, “We’re bringing out a report on such and such a date.” Sometimes it does occur around that time, sometimes it occurs later on. And
15 – so I was saying to him – actually, the whole background to this, Mr Hodge, was that I was giving him a proactive courtesy call and saying to him, “We know you’ve got this report coming out. We didn’t know you were going to cover PSF matters. It was really an ASF report in its initial construct. But if you’re going to do that, I can advise that we are very close to a resolution. I don’t want to front run the – and pre-
20 empt the board discussions, but if you want to know – and that’s probably the key point here – if you want to know anything further about any of us – any of this, let me know.” That was the kind of relationship that – and interaction, a constructive relationship with Mr Tanzer, and Mr Kell, for that matter, on other matters, Mr
Hodge.

25 An open and transparent one - - -?---Yes.

- - - to use the word you’ve used here?---Yes, because if – I thought that if they issue the report and then the following Monday we say, “You know how we’ve been
30 working on those PSF matters, we’ve now resolved them”, they might say, “Well, I wish you had told us that last week that you were resolving them.” So that was the main purpose of the contact that I had.

35 And so we see in that second paragraph you say that what you had said to Mr Tanzer was:

In the interests of openness and transparency, we wanted to let him know we are nearing completion of our position on PSFs.

40 ?---Yes.

Continuing:

...with board meetings occurring this week for NWMSL and NULIS.

45 ?---Yes.

And that then you said to him if the report was coming out later, in say a week or two, this could potentially be included though you didn't want to front run those board discussions?---Yes, I felt that appropriate, Mr Hodge, not to pre-empt what the trustee board as an independent board, what – what may happen there.

5

And you said:

The trustee may, for example, ask for further work or clarifications that would extend timeframes.

10

?---Yes.

Did you have some particular work or clarifications in mind when you said that?---No, I just didn't want to pre-empt what the trustee board might do.

15

And you then said to him:

The main point is that we are making progress and nearing finalisation.

20

?---Yes.

And if he wanted to know anything further he could ask you about it?---That's right. It was a very open door, Mr Hodge. It was saying – well, I don't think I could be any more open. If he wanted to know anything further about any of this, please let me know.

25

And then in the fourth dash point:

I noted that by six months time we will have well and truly disclosed our PSF matters.

30

?---Yes, well and truly.

Continuing:

35

Indeed, I said we may be in a position within the next few weeks to see the assurance review and PSF outcomes reported publicly by ASIC and ourselves whether together or separately. We will be back in touch with ASIC accordingly.

40

?---Yes, and there was a little hint in that. I said I didn't want to pre-empt the trustee decision. There was a little hint to him that the fact we might be all able to announce a remediation probably gave him the hint that the – that a full compensation approach would be forthcoming.

45

And why do you say to the Commissioner that you didn't say "our estimate is more than \$33 million in compensation that we will have to pay"?---Well, firstly, I can't remember whether I did or I didn't, Mr Hodge. That's the first - - -

5 Well, you didn't write that down, did you, Mr Hagger?---No, but I – you asked me why didn't I say it. I can't remember if I did or not.

That would be a pretty important piece of information to record, wouldn't it, Mr Hagger?---Well, from my perspective, I had – well, when you say it's important, I
10 said to him if he wants to know anything further of any of this, so if he said to me what do you think the dollars involved are, I would have referred him to our earlier conversation, which is that they had the number of members and I had given him an indication of approximately what the dollar figure was. So, you know, as an
15 accountant I could have multiplied those two together. He was obviously capable of doing that.

Now, NAB – we will come back to that in a moment?---Mmm.

20 NAB had already sent written updates for the report on the evening of 21 October 2016?---Yes.

And they had updated the figure for the TERP PSF?---Yes, I believe so.

25 They had updated it from \$11.7 million to \$12.4 million?---Perhaps you can show me but yes.

You know that they - - -?---I understand - - -

30 You know that they had updated the estimate?---Sorry?

You know that they had updated the estimate for TERP?---Yes, yes.

35 Do you say that there was some reason why they couldn't update the estimate to include SWiFT and Encompass?---Yes. Well, I think from ASICs viewpoint, TERP was a matter they knew a lot about. Then in relation to SWiFT and Encompass, they knew that a very extensive review was going on involving the trustee, involving management, and involving legal representations as well. So for them, it was a bit different to – for TERP. They – they hadn't been fully briefed on SWiFT and
40 Encompass beyond the breach review notice. So in – the report was a point in time report. In fact, these reports – I think this particular report has been done every six months since. I'm not exactly sure but I know one came out even in the course of this round, Mr Hodge. So – so it – it was a – so in relation to the – this matter, I was inviting him, if he wanted to know more, but I knew he was coming off a much lower base, but the invitation was there. The door was open, Mr Hodge.

45 You're saying really it was up to ASIC whether they wanted to ask you what's the amount of compensation?---Well, I don't know whether I mentioned it in the

conversation or – or not, Mr Hodge, but if he wanted to know it, if he had asked me in the conversation I would tell him, he already had the – you know, the numbers from the previous conversation about the number of members and a rough guide to what the dollars were, and finally, I said to him if you want to know anything further about it – actually, he – what I don't know when I have these high level
5 conversations also is what's being discussed at a working level. So he said to me he will let his team know about the call and if he needs further information he would let me know.

10 You knew that if they knew the amount of compensation and updated it, that NABs position in the ranking of entities would likely rise?---Sorry, can you repeat the question?

15 You knew that if you told ASIC that the amount of compensation that you estimated was \$33.7 million?---I see what you're saying.

20 - - - that NAB would no longer be just one in the middle of the pack?---Well, there's an assumption in your question saying if I knew if they knew. I think I've been clear that I've had a conversation with him before, and I opened the door for him to ask. So I don't know what further to say, Mr Hodge.

25 You knew if the report was issued and said – I'm sorry, I withdraw that. You believed that if the report was issued and the amount of compensation estimated for TERP, SWiFT and Encompass - - -?---Yes.

- - - was to rise up to over \$30 million - - -?---Yes.

30 - - - that NAB would no longer be viewed as just one in the pack?---Yes, but I wasn't concerned about that, Mr Hodge. It – it was – what I was doing in this conversation was putting in Mr Tanzer's hands the ability to include it or not.

When you say you weren't concerned about it - - -?---Yes.

35 - - - you've seen the Project Rio document that we already have looked at?---Yes, we can go back to that, if you like, Mr Hodge.

40 And the issue – the central issue that is raised at the conclusion of that document is that if the report goes out with the figures as they are, then NAB will be one in the middle of the pack, but if the report is adjusted to include NABs expanded PSF matters – expanded PSF numbers, NAB will be the worst of the banks in the report?---Well, Mr Hodge, that – that was a document not prepared by me, but then – and it came to me – I think you showed me a bit earlier that it came to me. And then on the Saturday, I chaired a call and I had the support of Mr Cahill and Mr Thorburn, to work my way through what the approach should be. And what we decided, and I
45 decided, was we should call and I should call either Mr Tanzer or Mr Kell on the Monday and open the door. And that then put it out of our hands whether it should be included or not because the invitation was there for ASIC to include it if they

wanted to include it, and not include it if they felt, well, that can wait for the next report.

5 What you could have done was to put in writing to ASIC what the total amount of estimated compensation for all of the PSF events was?---Yes, yes, I could have done that.

10 And there was a decision made not to do that?---Well, I don't think that – I don't think there was a decision made not to do that. The decision – there was a positive decision made. Mr Hodge, this is a positive, proactive communication to ASIC. It's actually the sort of thing that ASIC wants in a constructive relationship saying, "We know you've got this report going out. We're actually near finalisation on this matter. The door is open. It can wait till the next report. But that's your call."

15 Mr Hagger, let's look at another document which is the one I think you've been referring to, which is NAB.044.010.7685. The file note, Commissioner, is already in evidence.

20 THE COMMISSIONER: Yes.

MR HODGE: So this is an email that you send on the late afternoon of 22 October to Mr Cahill and copied to Mr Thorburn?---Sorry, it's here.

25 You see that?---Yes, that's right. That's what I was referring to.

And you see at the bottom of the chain of emails, Mr Thorburn writes and says:

Can we please discuss Monday when we meet.

30 ?---Yes, I see that.

And then you see the next email in time is from Mr Cahill saying:

35 *We are waiting for Andrew H to consider over the weekend and make a recommendation.*

?---Yes, I see that.

40 And then you see at the top of the page you are emailing Mr Cahill and Mr Thorburn saying:

Yes, that's still our plan.

45 Referring to the original recommendation, which is if it we go over the page to .7686, you see Mr Goonan is explaining that the present thinking is:

At this stage having seen the report our thinking is to be reactive from a communication perspective, given as drafted NAB is seen as just one “in the pack” rather than called out as an outlier.

5 ?---Yes, I see that.

So that what Mr Goonan is saying is the plan is to remain in the middle of the pack and not be called out as an outlier?---Well, Mr Goonan is saying our thinking is to be reactive from a communication perspective given. So that’s – so my – there’s two
10 things here. One is what is NABs communication publicly and, secondly, what is NABs communication with ASIC. And so the decision that – that I mentioned through the call on Friday was we will be reactive on communication about the report itself but we will be proactive in contacting Mr Tanzer or Mr Kell, and it ended up being Mr Tanzer. We thought that more appropriate – it was his area –
15 which I did on Monday morning.

The premise of being reactive in the media is that NAB will be seen as just one in the pack rather than called out as an outlier in the report?---Yes, I see Mr Goonan is saying that, but that’s – that doesn’t drive the decision of what to do with ASIC. In
20 fact, it’s clear, Mr – Mr Hodge, that we decided and I decided to call Mr Tanzer or Mr Kell, and it ended up being Mr Tanzer. And I’m glad we did that. It was a proactive communication that was open and transparent.

If you had told ASIC that the amount is \$33.7 million, then you believe that that would mean that you would be called out as an outlier rather than in the middle of the pack?---Well, there’s a couple of parts to that. Firstly, in my mind, I knew the conversations that I had had with Mr Tanzer before, so I knew he knew the broad dimensions. And then, secondly, I was opening the door to him. I was – the key was not with us. The key was with him to decide what he wanted to ask about and what
30 he would put in the report. So it was a – as I mentioned, Mr Hodge, it’s – it’s part of constructive dialogue with – with ASIC, and I’ve done that on other occasions as well, and then it’s open to them to ask questions. And following up some of those sorts of calls that I have on other occasions and other matters, they do call or their working team calls, you know, within hours and information is provided. What –
35 what – well, I don’t think I can be clearer than that, actually, so - - -

You agree that NAB could provide a written update confirming the facts in the report?---I said that NAB could have – could – it could have done anything, yes. It could have done that.

40 And it did provide an update, but only to update the number up to the final figure that appears in the report, not to include the Encompass and SWiFT remediation?---That’s right. Well, the regulatory affairs team was handling with ASIC the matters that were in the report, and the SWiFT and Encompass matters I
45 was handling separately in my conversation with Mr Tanzer.

Do you say you had thought that regulatory affairs would email ASIC and include the SWiFT and Encompass numbers?---No I'm not saying that.

5 You didn't know they were going to do that?---Well, I didn't know whether they did or not but they know that I was handling the SWiFT and Encompass matter with Mr Tanzer.

10 If they had done that then – sorry, if they had updated it to include the SWiFT and Encompass numbers then NAB, you believe, would become an outlier rather than in the middle of the pack?---Well, again, there's a number of parts to your question. So Mr Hodge, let's maybe break it down. Firstly, if ASIC had decided to include the SWiFT and Encompass matters and they put the numbers in, then I believed that the NAB number would go up, obviously, and we may no longer be – we may no longer be in the middle of the pack. I knew that. In relation to – I didn't know – I wasn't
15 involved in the toings and the froings between the regulatory affairs team and the – and the working team inside ASIC that was putting together the report. What my role was was to make a high level communication with the ASIC commissioner handling this matter to say we were nearing finalisation. “We know you've got this report coming out. We're an open door. Please, if you want to know more
20 information, otherwise we know it's a point in time report. Anything not in this report will be in the next six months will be well and truly done by then but that's your choice, Mr Tanzer.” That's the substance of the conversation.

25 Your responsibility was to determine the final strategy that would be used in dealing with ASIC and the report?---My responsibility – well, my responsibility via Mr Cahill and Mr Thorburn was to work through a few things, being the communication with ASIC and my decision and our decision was to ring Mr Tanzer or Mr Kell. And secondly, what would ultimately flow from a media response once the report was issued, whenever that was. And on the first one, I was very involved. On the second
30 one - - -

Sorry, is the second one the media response?---Yes.

35 Okay. Go on?---So the second one is sort of a dynamic – pretty much everything about media is dynamic, Mr Hodge, so that was working its way through with us not knowing what, you know, twists and turns the media might take the following week. We were conscious that we were having full-year results on that Thursday. As it happened, ASIC elected to lodge the report on the same day as the NAB results. So obviously, that's a time where media is quite involved in – you know, it's a time that
40 NAB is in the media when we do our full-year results. And so that was all being factored in and worked through through that following week. I – I wasn't involved in that part of it.

45 The media strategy to be reactive - - -?---Yes.

- - - depended upon the first issue which was what you were going to communicate to ASIC?---Well, it depended on that and other things, Mr Hodge.

And you understood – I want to put this to you squarely?---Yes.

That regulatory affairs was not going to tell ASIC about the amount of money that was estimated for Encompass and SWiFT?---Well, I didn't – I wasn't involved in that, Mr Hodge, but the understanding that, if we go back to who was on the call on the Saturday, which included Andrea Debenham from regulatory affairs, then she knew that I was calling Mr Tanzer, and I reported back to her afterwards and the others about my conversation with him. And so the ball was in his court, very squarely from my conversation, Mr Hodge.

Let's go back to page .7685?---Yes.

You see you say you ran a call for an hour with Mr Carter, Mr Owens, Mr Murphy, Mr Daly and Ms Debenham?---Yes.

Mr Carter reports to you?---No.

At the time – who did he report to, to Mr Cahill?---He reported to Mr Cahill.

By then when the change had been made?---Yes.

I see. Mr Owens is in corporate affairs?---Yes. So he also reports through to Mr Cahill via Mr Goonan.

Mr Murphy is the chief risk officer?---Correct. So he reports through to Mr Gall as chief risk officer of NAB.

Mr Daly was whom?---He reports to me. He was – he's my effectively chief of staff, my executive manager.

Ms Debenham was in regulatory affairs?---Yes. So she reported through – a different line but ultimately to Mr Gall.

You were the most senior person on this call?---Yes.

Ultimately, it was going to be your call as to what strategy was embarked upon?---Yes, but what I'm distinguishing for you, Mr Hodge – and sorry for being pedantic – I know it can sometimes seem complicated but - - -

It doesn't seem complicated, it seems very simple, Mr Hagger. You made a decision that you were not going to tell ASIC about the amount of compensation - - -?---No that's not true, Mr Hodge.

- - - for SWiFT and Encompass members?---Well, if that's your simple question, no.

You deny that?---I deny that.

And then you see in the second paragraph:

The additional nuance is that we think I should call Greg Tanzer or Peter Kell on Monday morning to advise the latest as to where we are up to on the PSFs.

5

?---Yes.

Continuing:

10

All in the ongoing interests of openness and transparency.

?---Yes, that was the intent.

Continuing:

15

We doubt they will wish to shoe-horn the matter into their report given deadlines, their multi-phased approach and the very substantial re-write which will be required to their report overall.

20

?---That's right. That was my feeling. I thought they – there were still things about the PSFs they needed to be educated about, because they had been patient with us while the review was going on and as the reviews were finishing and the board activities were occurring, then, you know, obviously after that there would be engagement with – with ASIC. So I thought they're probably unlikely to put it in the report, but we should give them the opportunity. It's their report and whatever they need to know, the door was open, Mr Hodge.

25

And so what do you say to the Commissioner you were planning to tell Mr Tanzer when you had – when you sent this email to Mr Thorburn and Mr Cahill on the evening of 22 October 2016?---Yes. Well, I know in your question you're making a lot of the dollar figure, but this conversation was really about, well, we're almost there on PSFs. So this – the resolutions of the board members are very close. And so we should let ASIC know that, because in my previous conversations with Mr Tanzer, I had said to him, "These matters are very complex", which is true. "We are taking the time to get to the bottom of it", which we did, and that will take a bit of time. So given that we were nearing the end of all of that, I felt it appropriate to tell Mr Tanzer or Mr Kell – as I say, it ended up being Mr Tanzer – that that's where we're up to and that was being entirely open and transparent.

30

35

40

I tender that document, Commissioner.

THE COMMISSIONER: Email Hagger to Cahill and Thorburn, 22 October '16, NAB.044.010.7685 exhibit 5.153.

45

EXHIBIT #5.153 EMAIL HAGGER TO CAHILL AND THORBURN DATED 22/10/2016 (NAB.044.010.7685)

MR HODGE: Then can we bring up NAB.047.001.3664. So this is the response from Mr Cahill that evening?---Yes.

And he says:

5

As we discussed on Friday, I trust your judgment on this one. I think the chief is probably keen to discuss on Monday to ensure Thursday goes as smoothly as possible.

10 ?---Yes.

And the “chief” is a reference to Mr Thorburn?---I assume so.

15 And Thursday is the day that NAB is going to release its full-year financial results?---Yes.

20 And, again, can I suggest a matter of concern was that ASIC would publish its report with the updated figures which would call out NAB as an outlier in advance or at the same time as the release of the full-year results?---Well, it was – when you say it’s a matter of concern, it’s – our full-year results process, Mr Hodge, involves – well, quite a few things. We issue ASX releases in the morning. We have investors and analysts in – and we make presentations with them, there’s discussions with media, and so forth. Now, that’s all in the context of the NAB Group result. So sometimes an issue of the day will come up, and this was potentially an issue of the day, depending on when the report was going to be coming out. We didn’t know – I’m not sure on what date we knew when the report was coming out but we knew it was planned for Wednesday to Friday that week. I think that was the figures you showed me earlier. And so that’s – so that’s what we were working our way through. But I don’t want to sort of amplify the word “concern” to be bigger than, you know, than it needs to be. It’s contextual in terms of it would be a matter that – the whole report, if it came out on the Thursday, would be a matter that regardless of where we were in it, would be potentially something that was discussed as it was released by – with questions from investors or analysts or media or anyone else.

35 I tender that document, Commissioner.

THE COMMISSIONER: Email concerning ASIC/Wealth, Cahill and Hagger, 22 October ’16, NAB.047.001.3664, exhibit 5.154.

40

EXHIBIT #5.154 EMAIL CONCERNING ASIC/WEALTH, CAHILL AND HAGGER DATED 22/10/2016 (NAB.047.001.3664)

45 MR HODGE: Can we bring up NAB.044.010.7691. Commissioner, could I just indicate, I would seek your indulgence, if this is convenient, to keep sitting for about 10 minutes so that I can finish off this topic. If that’s - - -

THE COMMISSIONER: Yes.

MR HODGE: - - - convenient. Thank you.

5 THE COMMISSIONER: Yes.

THE WITNESS: Mr Hodge, that's fine. But can I just please have some more water, if that's not asking too much.

10 MR HODGE: Yes.

THE COMMISSIONER: We will make some arrangements. Yes, go on, Mr Hodge.

15 THE WITNESS: Sorry, Mr Hodge it was easily reached. Sorry.

MR HODGE: Then you see there's a response from Mr Thorburn on the following morning, Sunday at 9 am?---Yes.

20 And he says he's sure you're working through it and will be all over the details?---Yes.

And the main thing that he is concerned about is the proposed media response?---Yes.

25

And do you remember – I think you answered this before but do you remember whether you ended up discussing with Mr Thorburn what the proposed media response was?---No, I actually don't remember that.

30 I tender that document, Commissioner.

THE COMMISSIONER: Email Thorburn to Hagger, 23 October '16, NAB.044.010.7691 exhibit 5.155.

35

**EXHIBIT #5.155 EMAIL THORBURN TO HAGGER DATED 23/10/2016
(NAB.044.010.7691)**

40 MR HODGE: And then if we go back to your email, your file note, which is NAB.047.001.1728?---Yes, I have that here. Thank you.

45 Can I suggest, on its face, it would suggest that what you are doing when you speak with Mr Tanzer, is giving him the impression that things are still up in the air and you will just have to wait and see what the boards resolve to do?---The way I would characterise it is a little different to that. What I'm saying to him is that we're

nearing completion, the board meetings are happening this very week, and that it could potentially be included but I didn't want to pre-empt the board discussions.

5 Well, it appears that you record yourself as having said to him that there are board meetings that are going to occur this week?---Yes.

For Services Limited and for NULIS?---Yes.

10 That is the board meetings have not yet occurred?---Well, actually, the MWNSL board meeting was on – I stepped out of the board meeting – it was still live but I stepped out of the board meeting when I called him.

15 Yes. But you didn't tell him that, did you?---I don't know. I've said to him it's occurring this week. I don't know whether when I started the call whether I said – you know, I've just stepped out of the board meeting. The way I've written it here could be the way that I said it word for word.

And what you've written down is that you said:

20 *I don't want to front run those board discussions.*

?---Yes.

25 Referring to the board discussions of National Wealth Management and NULIS?---Yes, referring to both, yes.

The board discussion of National Wealth Management had already occurred by the time you made your phone call, hadn't it?---Yes.

30 A couple of hours earlier, National Wealth Management had already resolved to approve the full remediation?---Yes. But the board meeting was still live.

It had already resolved to approve - - -?---Yes.

35 - - - full remediation?---Yes.

And you didn't tell Mr Tanzer that?---No, I don't think I did tell him that.

40 And it had resolved to indemnify NULIS?---Yes.

For the full amount to be repaid?---Yes.

45 And you didn't seriously think that NULIS was going to decide to compensate its members to a lesser extent than full remediation?---Well, I just didn't want to pre-empt the trustee board discussion. As I say, the trustee had to decide the characterisation of the expense and the disclosure issue and the compensation.

Do you seriously want the Commissioner to believe that you thought it was possible that the trustee board might opt for less – less remediation than what had been approved by NWMSL and what the NWMSL had agreed to indemnify the trustee for?---Well, what I want the Commissioner to hear – hear from me is my evidence is I didn't want to pre-empt the board discussion. The – the board discussion had not yet occurred and, as I mention in the next sentence, the trustee may, for example, ask for further work or clarification that would extend timeframes. And that was possible. In my experience, sometimes that occurs. So I didn't feel it appropriate for me to get ahead of the trustee board. The trustee was making its decisions. What I felt it was appropriate for me to do, Mr Hodge, was to open the door as widely as I did, which is very wide, to ASIC, saying if you wanted to know anything further about it, if you wanted to know – like, I – I didn't want to pre-empt the trustee board but he can.

He could have, for example, said to you, “Have you just stepped out of a board meeting where National Wealth Management has already resolved full remediation - - -?---Well - - -

- - - and then you would have said yes?---Yes.

If he had directly asked you the question then you would have been open and transparent with him about the situation?---Well, I was happy to be open and transparent overall. The whole construct of the call, Mr Hodge, was to be open and transparent and I believe I was.

By telling him, “We're waiting on the boards to resolve these things” when in fact you knew that National Wealth Management had already resolved on it?---Well, what I was saying to him was that board meetings were occurring this week, which is true, for NWMSL and NULIS, and I said, “We may be ready to be in a position to announce this with ASIC within the next few weeks.”

I want to be absolutely clear on this. You regard the way that you dealt with ASIC as being open and transparent?---Yes, I do. I think that at a commissioner level, it was appropriate to ring the commissioner and advise him of where we were up to, because without that call - - -

THE COMMISSIONER: Well, that's rather different from what you earlier described. What you said was we decided we should call Tanzer or Kell, open the door - - -?---Yes.

- - - and that then put it out of our hands?---Yes.

Is that the position?---Yes. It was their - - -

Yes?--- - - - ability at that moment, Commissioner, to decide do we want this matter in our report or don't we.

Yes. That passage of the evidence is at page 4762, lines 18 to 30, I think?---Thank you, Commissioner.

5 MR HODGE: Now, just so we can make sure we've seen the relevant documents, can you then bring up NAB.005.893.0001. So you see this is a chain of emails between Ms Debenham from NAB, who is the head of regulatory affairs, and ASIC?---Thank you. Yes.

10 And if you look in the email starting in the bottom half of the page, you will see Ms Bird of ASIC has sent an email on the evening of 24 October?---Yes.

And she says in relation to some comments that NAB have made:

15 *Given all institutions have now provided us with updated estimates, we propose to give current estimate figures in tables 2 and 4. For NAB we will use the figures in your 7 October monthly update. If you have an October estimate for the MLC Nominees Proprietary Limited compensation, we will include it. Otherwise, we will use the \$108,867 and \$12.4 million figure.*

20 ?---Yes.

So that is, as we understand it, the amount paid and the amount estimated?---For TERP, yes.

25 And the response from Ms Debenham is:

Thank you. Please use the 108,867 and \$12.4 million figure.

30 ?---Yes, I see that.

And that is consistent with the plan that you had approved on the Saturday evening, which was to not put in writing the full \$33.7 million - - -?---No.

35 - - - figure?---No.

So this conduct of Ms Debenham is inconsistent with what you wanted to occur?---Well, I – I wasn't on this trail, and Ms Debenham – I haven't – I actually haven't seen this, I don't think. Am I copied – no.

40 You're not copied to it, Mr Hagger?---Sorry, your question is did she do the right thing. Is that your - - -

45 She acted consistently with the plan that you had approved on the evening of 22 October?---I see. Well, she was working with – Joanna Bird is from the advice team – on these matters, and the plan was in relation to SWiFT and Encompass, I would discuss with Mr Tanzer. She could have used the – the other number. She wasn't under instruction from me either way, but I imagine she was waiting to hear back

from ASIC if they wanted to include the PSF matter knowing that they would also need to get more details, not just a number but also information of how to characterise it, knowing that ASFs and PSFs are different.

5 Now, I just do not understand that answer, because you know that there is no difference between the TERP PSF, the SWiFT PSF and the Encompass PSF, don't you?---Well, what was being worked through was very much that point, were they different or not different, and that's really a lot about what the investigation was about, Mr Hodge.

10 And they weren't different?---Well, ultimately the same conclusion was made on the three of them in relation to non-linked advisers, and we reached the conclusion to compensate all the money to all the members.

15 And that conclusion had been reached, at the latest, the preceding week by 20 October 2016?---Not, not, not - - -

Which is - - -?---Not by the trustee, Mr Hodge.

20 Which is when corporate affairs knows what management is going to recommend?---But not by the trustee, Mr Hodge.

The trustee hasn't yet passed its resolution?---Correct.

25 To approve the compensation plan?---Correct.

So are you saying that the reason that the full number wasn't given had to do with the trustee not having passed the resolution?---In part, yes. That's one of the reasons.

30 And so then when the trustee did pass the resolution on 26 October 2016 - - -?---Yes.

- - - did you then contact ASIC to say, "Stop, we've got the right number now"?---No, I didn't do that.

35 And on 27 October, the report was published?---Yes.

And NAB announced its full year results?---Yes, we did.

40 And NAB was just one in the middle of the pack?---Yes, it was. Actually, my recollection, Mr Hodge, was that CBA - - -

They were open and transparent?---Sorry, maybe we can go back a step. Can I finish my sentence? CBA announced on advice service fees, \$100 million or something like that. So the - that's my recollection.

45 I tender that document, Commissioner.

THE COMMISSIONER: Emails between Debenham, ASIC and others, 24 October '16, NAB.005.893.0001, exhibit 5.156.

5 **EXHIBIT #5.156 EMAILS BETWEEN DEBENHAM, ASIC AND OTHERS DATED 24/10/2016 (NAB.005.893.0001)**

10 MR HODGE: Commissioner, can we just bring up NAB.047.007.5955. And there's an attachment to that. So you will see this is an email from Ms Debenham to you and also to Mr Carter and Mr Murphy?---Yes. I see that.

And it's sent on the morning of 24 October 2016?---Yes, I see that.

15 And it says:

Please see the attached document summarising feedback to ASIC as at Friday evening.

20 ?---Yes. Thank you.

And then if we bring up the attachment which is NAB.047.007.5959?---Thank you.

25 So you will see this is the document that NAB had provided to ASIC. And if we go over to the second page?---Yes.

We see item 6, Amendment?---Yes.

And the amendment is to the affected customers for MLC Nominees?---Yes.

30

And otherwise there doesn't appear to be any amendment?---I - - -

I'm sorry, there's an amendment which is to go from 11.7 to 12.4?---I see. Yes.

35 And then if we go back a page?---Just before you do, Mr Hodge, so it says there:

The figures included in the draft report were sourced from the March 2016 quarterly breach update. These amended figures are correct as at 31 August 2016.

40

I think 31 August was the date being used in those tables in the ASIC report.

Yes. In the draft?---Yes, and – and in the final.

45 No, remember we've seen the email. We just looked at it. Where ASIC emailed Ms Debenham and said, we've now received updated figures from other banks - - -?---Yes.

- - - so we're going to use October figures. Do you have updated figures for us for MLC Nominees?---I see. I think what I was referring to here was these were the figures as at 31 – 2016. I was just pointing that out in context to your question.

5 You knew what position NAB had put in writing, on the evening of 21 October 2016, about the factual figures in the draft report?---Yes, I think I did.

I tender the document and the attachment, Commissioner.

10 THE COMMISSIONER: Emails Debenham to Hagger and others, 24 October '16, NAB.047.007.5955, together with attached table, NAB.047.007.5959, exhibit 5.157.

15 **EXHIBIT #5.157 EMAILS DEBENHAM TO HAGGER AND OTHERS
TOGETHER WITH ATTACHED TABLE DATED 24/10/2016
(NAB.047.007.5955 & NAB.047.007.5959)**

20 MR HODGE: And then can we bring up NAB.124.002.0727. You see this is an email sent from you to Mr Carter on the evening of 28 October 2016?---Yes.

Where you say:

25 *Paul, what a big week it was. When/how should we communicate with ASIC re PSFs. What's the best way of going about this?*

?---Yes.

30 And you sent that email because you knew that NAB had not fully communicated with ASIC about the PSFs?---No.

And you knew you were now going to need to do so?---No.

35 And on the – I tender that email, Commissioner.

THE COMMISSIONER: Email Hagger to Carter, 28 October '16, NAB.124.002.0727 exhibit 5.158.

40 **EXHIBIT #5.158 EMAIL HAGGER TO CARTER DATED 28/10/2016
(NAB.124.002.0727)**

45 MR HODGE: And on 3 November 2016, a presentation was given by NAB to ASIC?---Yes.

Did you attend that presentation?---No.

Were you aware of what was in the presentation?---No.

Were you aware – I will show the document. Can we bring up
ASIC.0039.0001.6376. So this is a presentation that was provided to ASIC produced
5 by NAB?---Yes.

Have you looked at this document in the course of preparing to give
evidence?---Over the weekend, it was one of the many that I – thank you - - -

10 And if you go to page .6382, which is page 7?---Yes.

And you will see this has the figures for SWiFT and Encompass?---Yes.

And what I want to suggest to you is that the first time that NAB told ASIC that the
15 total estimate in relation to the PSF trade-up was more than \$30 million was on 3
November 2016 by this presentation?---If we just break that down, there were two
trade-ups and a product upgrade. So in relation to TERP, at that point – at the
moment immediately before this – ASIC had the TERP numbers, so the 108,867
20 members, which I think is the same figure as we saw a moment ago in the previous
attachment that you showed me, Mr Hodge, of Ms Debenham’s interactions with Ms
Bird. So that was clearly the TERP matter, number of members there being
consistent. And so secondly, ASIC – I don’t know whether these figures exactly
match up with the earlier breach report of September 2016, but I think they do. I
25 think they’re roughly about right. And in here would be an update. And then,
thirdly, I had mentioned to Mr Tanzer, as I mentioned, the approximate number
involved. But this is the first time that we have, by then, communicated with ASIC
post the trustee meeting, which approved the remediation program and the
compensation. So this was the first time ASIC had all that together. They had a lot
30 of the constituent parts but they were not aware until this moment that the final
decision of the trustee was to approve a full compensation.

Commissioner, I tender that document.

35 THE COMMISSIONER: Update to ASIC slide pack, 3 November ’16,
ASIC.0039.0001.6376, exhibit 5.159.

40 **EXHIBIT #5.159 UPDATE TO ASIC SLIDE PACK DATED 03/11/2016
(ASIC.0039.0001.6376)**

MR HODGE: Is that a convenient time - - -

45 THE COMMISSIONER: Yes.

MR HODGE: - - - Commissioner.

5 You must have been happy, though, for him to know what the figure was before the boards had met, because you say you had already, in a roundabout way, indicated what the figure would be?---Well, I think you're mixing two concepts, Mr Hodge. There's the concept of what the fees were, and then there's the concept of what the compensation was. So what I had indicated to him throughout was that the fees were a little higher in the SWiFT and Encompass case than in the PSF case, and then the – it obviously flows from that that if there's full compensation, then they're the numbers, but also I wasn't pre-empting that, you know, the – the fact that the trustee was still evaluating options. And I was aware that the trustee was still evaluating options.

10 Do you say in your earlier conversation with Mr Tanzer - - -?---Yes.

15 - - - that you had only, in a roundabout way, intimated what the amount of the fees were?---Yes. He had the – so he – I mean, I had a number of conversations with – with Mr Tanzer, Mr Hodge, but in – in the one that we were talking about this morning, I said that I had said to him the number of members – well, they already had that, and then that the fee amount was at or slightly higher for the SWiFT and Encompass matter. So if we just stand back for a moment, Mr Hodge, it's like saying, okay, there's TERP, there's 108,000 customers, 12, 13, 14 million dollars, whatever the figure is, and then SWiFT and Encompass, another 108,000 customers, and something slightly higher than 12, 13, 14 million is what's involved. So he had the customer numbers and he had the guidance that I had given him. So I'm an accountant. I'm not sure if Mr Tanzer was an accountant or not but I think estimations flow from that.

20 Now, again, if we come back to the question that I asked you, I said do you say in your earlier conversation with Mr Tanzer that you had only, in a roundabout way, intimated what the amount of the fees were?---Yes, I gave him the guidance. I think I've just answered that, haven't I, Mr Hodge. What haven't I answered?.

25 You intimated that there would be full compensation?---I hadn't intimated that there would be full compensation because that was still being worked through.

30 But by 21 October 2016 - - -?---Yes.

35 - - - NAB knew that the proposals being taken to both boards was that there be full compensation?---Well, the proposals being taken to both boards had two options, Mr Hodge. One option was for full compensation. The other option was for an opt-in approach.

40 Have a recommendation that there be full compensation.

45 MR THOMAS: Excuse me, let him finish, with respect, Mr Hodge.

MR HODGE: He's not answering my question.

MR THOMAS: I didn't believe that - - -

THE COMMISSIONER: What have you got to say, Mr Thomas?

5 MR THOMAS: All I wished to say is it was my understanding that Mr Hagger had yet to finish his answer. That's all I wish to say.

THE COMMISSIONER: Yes. Mr Hodge, put the question again, would you.

10 MR HODGE: Thank you, Commissioner.

By 21 October 2016 - - -?---Yes.

- - - NAB knew that the proposals being taken to both boards was that there would be
15 full compensation?---Well, the proposal – so I'm being precise with you, Mr Hodge. The proposals being taken to both boards were – was that there were two options in relation to the characterisation of the matter, and two options in relation to the compensation approach, and that the preferred view or better view from NWMSL was a characterisation and – of a trust expense and full compensation. So – now, that
20 same recommendation was then being taken to the trustee with a letter attached signed by me as chair of NWMSL saying this is our view, now it's for your view. So on 21 October I did not know with certainty, Mr Hodge – this probably squarely answering your question – I did not know what the resolution of the trustee would be.

25 You knew that the recommendation that was going to be taken to the NWMSL board was - - -?---Yes.

- - - for full compensation?---Yes.

30 You knew that the recommendation that was going to be taken to the trustee board was for full compensation?---I didn't know that the NWMSL board would approve that on 21 October.

35 Mr Hagger, you are the chair of the NWMSL board?---Yes.

The other two members who were attending that day were Mr Carter and Mr Lawrance?---Perhaps we can look back at the minutes – perhaps we can look back at the minutes as to who the other attendees were.

40 Take my word for it?---Sure I'm happy.

It was Mr Carter and Mr Lawrance?---Sure.

45 Mr Carter had prepared a recommendation that had been approved by you?---Yes.

You had approved it for full compensation?---Yes.

You didn't doubt, did you, that on 24 October you were going to vote in favour of the recommendation that you had approved?---Well, your question is did I have absolute certainty in relation to - - -

5 Did I use the words "absolute certainty"?---Well, you said I "didn't doubt" and my answer is – and I'm being thorough – we have board meetings for a reason, Mr Hodge, and that is they're on certain days and we evaluate all the matters, even if there's matters that have arisen between a paper being prepared and the moment of the board meeting, and then in this matter – and probably the most important factor –
10 is that then the trustee board was meeting of which I'm not a part. It's an independent board and their job is to do their work diligently and make their decision. So it's not for me to run over that. I actually decided, and we decided on the Saturday beforehand, that what I should do is call Mr Tanzer and say, "We are nearing completion. The board meetings are this week. You've got a report coming
15 out. He – and ASIC at that moment held all – all the – you know, the ball was in their court, and – and I had opened – I could not have opened the door any wider, Mr Hodge.

NAB had provided - - -

20 THE COMMISSIONER: So your answer is you could not have opened the door any wider. Is that right?---Yes.

Very well. Go on.

25 MR HODGE: NAB had provided previous estimates of the amount of compensation to ASIC without a remediation plan having been approved by the trustee?---Sorry, can you repeat the question, Mr Hodge.

30 NAB had provided previous estimates to ASIC of the amount of compensation without a remediation plan having been approved - - -?---Yes, you showed me those documents earlier on.

35 And NAB's best estimate of the amount of compensation on 21 October 2016 was, as you've already agreed, approximately \$34 million?---That was the best estimate subject to board approvals, yes.

40 So can I suggest to you the absence of resolutions from the board did not prevent NAB from telling ASIC what its best estimate was?---Well, I didn't want to pre-empt the – the trustee's decision because I'm very respectful of the trustee board. So I invited ASIC to do precisely that through the conversation with Mr Tanzer.

You say you wanted to be open and transparent with ASIC?---Yes.

45 What you could have done was insisted that regulatory affairs update ASIC in writing with the true estimate of \$34 million?---Well, I – I could have instructed regulatory affairs to include the – the SWiFT and Encompass matters. And they

could have done that without me giving that instruction. But I imagine – no, actually, I won't – I will withdraw "imagining", I will say what I know. In my conversation with Mr Tanzer, I was very clear with him that he – that – that anything he needed to know about any of this to please let me know. And he said he would contact his team and if he needed to know more he would get back to me.

What was - - -?---Commissioner, that's why I'm saying the – I could not have had the door any more widely open.

All right. But just – if we can return to my question. I appreciate there are other things that you want to say. But the question that I asked you was what you could have done was insisted that regulatory affairs update ASIC in writing with the true estimate of \$34 million, and your answer to that question is yes?---Yes, if I had done that, I would have said still subject to board resolutions. And also, as you can see in the discussion with Mr Tanzer, an education process about the SWiFT and Encompass matters.

And, in fact, Ms Debenham had specifically asked the question to you in her email of 19 October 2016 whether she should reveal to ASIC the full amount of the compensation estimate for PSFs?---Perhaps can – can we just go back to that exhibit, Mr Hodge. I have it here, so it won't take long, I imagine.

The email of 19 October 2016. It is NAB.047.007.5472?---Yes, the very first exhibit you showed me this morning, Mr Hodge.

And she addresses this email to you and some others and asks for:

... agreement and instruction on whether we intend to pre-emptively communicate about –

and then she sets out a number of options?---Yes, I – I see that.

So she had specifically raised the question and sought instructions?---Yes, she has. What I don't know here is whether the pre-emptive communication refers to ASIC or whether it refers to her working with the corporate affairs team. But perhaps I can study the document for a moment, Mr Hodge. Or – is that important to you?

Study the document, Mr Hagger?---Yes. I – the way I read that, she's referring to a pre-emptive communication out into, like, the marketplace, in which case we would need to be liaising with ASIC, because if we were to decide, well, rather than have these matters turn up in an ASIC report, we want to tell – tell our own story our own way out into the marketplace. We would obviously have to liaise with – with ASIC. Ultimately that's not the path we went down, as you know.

No. She is asking for instruction, because it will influence how she engages with ASIC?---Yes, that's true.

So she wants to know what the plan is?---Yes.

And she's looking to you for that information?---Well, she's looking to four of us in
– in that respect, in that email.

5

And one of those people is Mr Owens?---Yes.

And Mr Owens is the head of corporate affairs?---In – in Wealth he was I think at
that time but he's one of the corporate affairs executives.

10

And he recommended that NAB be open and transparent and reveal the
approximately \$34 million?---Yes. His – well – you showed me his exhibit this
morning. I've got it in front of me, Mr Hodge.

15

NAB.162.017.2128?---On 20 October he was saying our preferred option would see
NAB proactively announce all aspects, and that was assuming the NWMSL and the
trustee will accept management's recommendation. So that was his preferred option.

20

And one of the premises of his recommendation was that it would involve a
proactive communication strategy?---Yes, proactive – sorry, proactive towards who,
Mr Hodge?

It's what he describes as a – let's bring up the document.

NAB.162.017.2128?---Yes. I have it in front of me, Mr Hodge.

25

It will be a proactive communication strategy effectively to the world?---Yes.

If the \$34 million was going to be revealed?---Well, if – if NWMSL and the trustees
accept management's recommendation.

30

No?---Yes.

He says:

35

*Our recommendations are below. We realise that our preferred option could
be seen as radical and not without risk, but we believe it's the best long-term
strategy.*

Do you see that at the top of his email?---Yes.

40

And he says:

*In making these recommendations we have kept in mind these principles, the
first of which is be open and transparent with our customers, people and
stakeholders.*

45

?---Yes.

The second of which is :

Do the right thing by our customers.

5 ?---Yes.

The third of which is:

10 *Maintain good working relationships with our stakeholders, particularly our regulators.*

?---Yes.

And then he says:

15

In making these recommendations, we have assumed that NWMSL and the trustees will accept management's recommendation to remediate in full.

?---Yes.

20

And that's because he already knows, as you do, that the management recommendation is to make remediation in full?---Yes, the point I was making, Mr Hodge, is that he's assuming they will accept, and those board meetings had not yet occurred.

25

And his preferred approach is that NAB proactively announce all aspects of the PSF issue?---Yes.

Including customer numbers and the total remediation amount?---Yes.

30

And that would be – or what would be involved in that is a proactive media strategy?---Yes.

But instead, a reactive communication strategy was decided upon?---Yes.

35

The premise of the reactive strategy was that the ASIC report would not be revised to include the full \$34 million?---Sorry, can you please repeat that?

Yes. You don't need to look at this document. Just go from your memory?---Sure.

40

The premise - - -?---Yes.

- - - of the reactive strategy - - -?---Yes.

45 - - - is that the ASIC report would not be revised to include the full \$34 million?---I see. Well, I'm not sure on 20 October, Mr Hodge, whether Mr Owens knew what

ASIC was going to end up putting in their report, because it was after that, obviously, that I arranged for the conversation with Mr Tanzer.

5 Now, I don't – I understand you want to keep referring to the conversation with Mr Tanzer. Is there honestly any way in which you can say that referring to the conversation with Mr Tanzer was an answer to the question that I asked you?---Perhaps you could repeat the question then, Mr Hodge.

10 On 22 October 2016 was when you convened the telephone conference?---On the Saturday, yes.

And it was agreed that you would stick with a reactive communication strategy during that telephone conference?---Yes.

15 And the premise of the reactive communication strategy was that the ASIC report would not be revised to include the full approximately \$34 million - - -?---I see.

20 - - - in estimate in compensation?---The premise of the reactive strategy was to include – you know, the strategy on the Saturday was added to, which was that I would have the conversation with Mr Tanzer. That's why it comes squarely in answer to your question, Mr Hodge.

25 If the ASIC report was updated to include the full \$34 million in compensation, then NAB would adopt a proactive communication strategy rather than a reactive communication strategy?---Well, it – so there are a few factors at that point, Mr Hodge. The – the most important of which is the trustee board meeting. In the document you just showed me, the board meetings are a dependency of Mr Owens' thinking.

30 Perhaps if I ask you my question again?---Sure.

If the ASIC report was updated to include the full \$34 million in compensation - - -?---Yes.

35 - - - then NAB would adopt a proactive communication strategy rather than a reactive communication strategy?---Possibly, but the media strategy is dynamic. It's – it's worked out, you know, all the way through, and if ASIC said, "We're updating our report to include SWiFT and Encompass" that would also include some wording around the SWiFT and Encompass matters and all that would be taken into account
40 in an updated media strategy.

45 I'm not sure I completely understand this. When you say "updated to include the SWiFT and Encompass matters", the only thing that would need to be updated is the amount of estimated compensation?---Well, in my – I know you don't like me referring to the conversation with Mr Tanzer, but in the conversation with Mr Tanzer, I made the point that the – what was happening was that the PSF matter was being blended in the report with the ASF matter, and that given that ASIC had had

less visibility of the SWiFT and Encompass matter, it was important, we felt, for them to have an education process that would help them be accurate in their report on the matter if they wished to include it, and hence I – another reason for having the door wide open.

5

So this is a new reason for having the door wide open, you say?---Well, I'm refer – and if you like we can go back to the file note, but the – Mr Hodge, but I'm referring to that there were various points in our conversation, including that one, and that you said all they would have to do in the report is put a dollar figure, and we were putting to – or in my conversation with Mr Tanzer I was saying, well, you – you know, there's things – you would need to know a few more details than you probably currently have. So hence the door was wide open, Mr Hodge.

10

What they were ask – what ASIC had asked for was an updated estimate of the amount of compensation that would be payable by MLC Nominees?---Yes, that – that's in Ms Debenham's email trail that you saw separately, and that had the 108,000 customers, which is the TERP matter.

15

And Ms Debenham provided an update to update the figure to \$12.4 million -- --?---Yes.

20

-- -- rather than \$33.7 million?---Yes, because he was updating the TERP matter which was 108,000 customers.

Now, the report does not refer to the TERP matter, does it?---I'm not sure whether it refers to it in that name or not.

25

What she was updating was an estimate of the amount of compensation payable by

MLC Nominees?---Well, she was – what she was doing was updating in relation to the TERP matter.

30

That's right. She didn't bother to include the amounts for SWiFT and Encompass?---Well, in relation to SWiFT and Encompass as I mentioned, that was being handled through my discussion with Mr Tanzer, and the invitation to him to ask any questions he needed to in order for ASIC to finalise its report.

35

And you knew that Ms Debenham had not given a written update to include the amounts for SWiFT and Encompass?---I'm – I'm sorry, Mr Hodge, I – I think I was copied on that email trail earlier, and I'm happy to take your word for it if I was, in which case I knew. If I was not copied, then – then I didn't know.

40

You don't seriously suggest, do you, Mr Hagger, that you thought there was some possibility that Ms Debenham had in fact, in writing, updated the compensation figure payable by MLC Nominees to include the amounts for SWiFT and Encompass?---Well, based on my conversation, I think the team was waiting for Mr Tanzer to come back, but if the working team had come back to Ms Debenham and

45

said, “We actually want to include the SWiFT and Encompass matters”, then that would have been, you know, something that she would respond to.

5 So if ASIC had come back and specifically asked you, “What is the amount of compensation that you estimate for SWiFT and Encompass?”, then you would have told them?---Yes, we would have had a conversation with them first about the nature, as per my conversation with Mr Tanzer, and we would have asked them about the timing of their report vis-à-vis the board meetings. For example, if the ASIC report was coming out prior to the trustee board meeting, you know, that – that could have raised some – some issues.

10 But because ASIC had only put in its report a number for MLC Nominees and asked for any updates to that figure - - -?---Yes.

15 - - - it, therefore, wasn’t necessary for NAB to include the amounts for SWiFT and Encompass. Is that your evidence?---Well, I think the – the evidence is that we were talking to Joanna Bird on updating the number on the TERP matter, and that’s – that’s what we did.

20 And you knew before you spoke to Mr Tanzer at 10.30 on the Monday morning, that the written update that had been given was only for the \$12.4 million?---I said earlier if – I’m happy to – if I was copied on that email trail, then yes.

25 And you say that you wanted to be open and transparent with ASIC?---Well, I was open and transparent with ASIC.

30 And you say that the way that you did that was by saying to Mr Tanzer things that would give him the impression that the situation about SWiFT and Encompass was still uncertain?---Well, what I was saying to Mr Tanzer – and, really, the whole reason – remembering this is, you know, at my level to his level – so this is Commissioner level of ASIC saying, “We’re nearing completion. We know you’ve got the report. If you would like to know more, then – about any of this, then please let us know.”

35 THE COMMISSIONER: So being open and transparent was accomplished by saying, “Ask us what you like, but we won’t tell you what to ask”?---I’m not sure about the second one, but yes. Yes, Commissioner. The – because we were hinting to them what to ask, Commissioner, which was the board meetings are coming up, and so it’s – you know saying to - - -

40 Well, what other board meetings had happened by the time you spoke to Mr Tanzer, in the sense that the relevant resolution had passed?---In the case – so the – the remediation to members is approved by the trustee - - -

45 I’m sorry, Mr Hagger. I can’t have made myself plain. The board of NWMSL had resolved its position by the time you spoke to Mr Tanzer?---Yes, it had. The – the board meeting was still live - - -

Yes. The board meeting – I understand that. The board meeting of the trustee was yet to come?---Yes, correct.

5 NWMSL had agreed that full compensation would be paid; is that right?---That – yes, we had agreed that was - - -

And that NWMSL would bear the cost of it; is that right?---Yes. Can I be more precise, though, for you, Commissioner? We had agreed a letter which would go to the trustee board.

10 I understand that?---And that letter said it is open to the - - -

Making an offer?---Making an offer.

15 Making an offer of full compensation - - -?---Yes.

- - - which NWMSL would pay?---Yes.

On what possible basis – what possible basis – would the trustee say, “No, pay less”?---Well, I didn’t want to pre-empt the trustee board meeting, Commissioner, and what was put in front of - - -

I understand that. You’ve said that more than once, Mr Hagger?---Yes.

25 My question was on what possible basis would the trustee say “No, pay less”?---Well, in the trustee board papers and in our letter to the trustee, we said there are two approaches available, and there are two remediation processes available, and we believe the better view is this characterisation, as a trust expense and full remediation. But it was open – when you say “what possible”, Commissioner, I’m

30 just pointing out there were two options in front of the trustee board, and I respect the trustee board. I respect its independence. And so it was meeting on the Wednesday, and then – and then, meanwhile, ASIC was in a position of knowing the board meetings were happening during the week, and that if they wanted to know more, to please let me know.

35 MR HODGE: In being open and transparent - - -?---Yes.

- - - Mr Tanzer – you gave him the impression that neither board meeting had occurred?---Well, I said to him the board meetings are occurring this week. I think

40 that’s what the file note says. I don’t know precisely what the exact words were. And – but I think that’s the - - -

You said to him, “I don’t want to pre-empt the board discussions”?---Yes. That’s in the file note.

45 The only way that he could have understood that was that both boards were still to discuss the issue?---Well, I – I don’t know how he would - - -

That's how you meant him to understand it, that neither board - - -?---No, my - - -

- - - had yet resolved the issue?---No, my intention – actually, my main focus was on the trustee board meeting to come.

5

If you wanted to be open and transparent with him, you could have said to him, “NWMSL has met this morning”?---Yes, I could have told him that.

10 You could have said to him, “The board has resolved to approve full remediation and to indemnify the trustee”?---I – yes, I could – or to make the offer, but yes, I could have told him that the board had resolved to make that offer.

15 You could have told him that NABs best estimate, as at 24 October 2016, of the amount of compensation that will be payable for the PSFs is approximately \$34 million?---I could have told him that.

20 You told him none of those things?---I – I don't know whether I told him – like, I don't know whether the file note is a full record, and there are other aspects, but, also, I was – you know, as we've been through, Mr Hodge, I was aware he was aware of the dimensions of the matter, and, also, I was saying to him we could be in a position to announce within whatever it says there, the next few weeks, with ASIC, and I mentioned to you that that of itself is a hint to Mr Tanzer that full compensation is involved. So I think I'm kind of leading him with some good sign posts, but meanwhile saying, “If you want to know anything about any of this, knowing that

25 you have your report coming out, then that's your call.”

30 What you were doing was making sure he would never be able to say, “Why didn't you contact me to tell me these things before we finalised our report”?---Well, you're putting that as a negative. I – my view and the view we took on the Saturday was that this would be a proactive, positive communication with ASIC to open the door and tell them that, actually, this matter which has been going on for some months is nearing finalisation. There are, at any point in time, Mr Hodge, a number of matters in train with ASIC across the bank and across all banks.

35 And how many of those are about to be published in a report that week by ASIC?---If I could just finish, Mr Hodge. At any point in time, there will be reports on various things, and there are a number of ASIC reports that have a bit of a series to them. So – and this was intended to be one of a series. So we decided that it would be good practice to proactively ring Mr Tanzer and give him the opportunity

40 to include it, notwithstanding that ASIC hadn't done its full work on SWiFT and Encompass, and still have more work to do.

45 If you were honestly going to be open and transparent with ASIC, you would have told them that NABs current and best estimate of the full amount of compensation payable in respect of the PSFs was \$34 million?---Yes, well, my intent with ASIC, Mr Hodge – I could have done a number of things, but my intent was opening the

door to them, that if they wanted to include that matter in their first report, that they were welcome to do that, and then it was in their hands.

5 They didn't know that matter because that matter is the \$34 million?---They knew that matter, Mr Hodge, because it's SWiFT and Encompass. They had been aware of it for some months, perhaps many months. I had a number of conversations with Mr Tanzer along the way. He knew that - - -

10 You say they knew that it was \$34 million?---I said they knew the dimensions of the matter, which - - -

15 Please, if you would listen to some questions as I ask them and answer them. If you were being open and transparent with ASIC, you would have told them that the full amount of compensation that NAB on that day estimated that it would have to pay was \$34 million?---And I'm replying by saying I was being open and transparent with ASIC, and that in relation to the dimensions of the number, I was aware they were aware of the dimensions of the number, and I was telling them that there were board meetings going on during the week, and that, you know, it was up to them when they wanted to release the report and – and the questions they wished to ask us, and so we – we were being open, Mr Hodge.

25 Why do you say that you did not say in writing on 24 October 2016 to ASIC that NABs best estimate of the amount of compensation payable with respect to the PSFs was \$34 million?---I think because from our perspective, ASIC were asking for an updated figure in relation to the customer matter that was in there, which is the 108,000 customers, the TERP matter, which we gave them, and secondly, in relation to the SWiFT and Encompass matter, we had – you know, I had had my conversation with Mr Tanzer. So in our minds, there was no cross-reference between Joanna Bird's question for an update of the matter relating to the 108,000 customers, and Mr Tanzer, there wasn't – in a sense that Mr Tanzer had spoken to – sorry, to Ms Bird.

35 Now, let's take each of the two reasons that you've given. The first reason is because you say, as I understand it, that you believed that ASIC was only seeking an update in respect of the amount for TERP?---Yes.

40 And what is the basis of your belief for that statement?---Because this was a kind of tweaking exercise, the way we understood it, of the matters that were currently listed, and I think you took me to that table earlier on, and the MLC Nominees matter that was mentioned there was in relation to TERP.

45 No. Sorry. Let's bring it up. NAB.158.006.5030. And can we go to page .5053. You say there's a reference to TERP there, do you, Mr Hagger?---No, there's a reference there to an employer superannuation plan which we took to mean TERP.

I want to understand that this is seriously your evidence, that you say that internally, NAB had a discussion and thought, "Well, this is only referring to the employer superannuation plan for TERP, and, therefore, ASIC is not asking us to give an

update on the full amount of compensation that we expect to be payable in respect of all PSFs”?---Yes, that is – is my evidence. In – as Ms Debenham had said in her earlier note, ASIC has told us they want to include TERP, and then later on, they asked for an update about it. But we thought, given that we were near finalisation on the SWiFT and Encompass matters, that we decided and I decided that we should contact Mr Tanzer or Mr Kell, as we did.

And so that’s the second reason why you say – why you said before that you didn’t put it in writing, which is that you were contacting Mr Tanzer?---Yes, I contacted Mr Tanzer.

Now, did that in some way prevent you from putting it in writing?---No.

So the fact that you were contacting Mr Tanzer can’t have anything to do with why it is that you didn’t say the full amount of an estimate of compensation is \$34 million?---It can, Mr Hodge, but you’re asking me a couple of questions, I could – could I have? Well, yes, I could have put 34 million in writing. What I did was verbally ring Mr Tanzer and say, “This matter is nearing finalisation”. All those details were wrapped up in whatever he needed to inquire about, and, really, the – he only need look at the board papers of the board meetings that I referred to in my conversation with him. So this was all a positive, constructive, open conversation which I held with Mr Tanzer. And - - -

I want to suggest to you the reason that you didn’t tell ASIC in writing that the estimate of full compensation was \$34 million was for the reasons that were written down by NAB, which were that doing so would mean that NAB would become an outlier rather than middle of the pack?---No, I don’t agree with you, Mr Hodge.

Do you say that that had nothing to do with the decision?---Correct.

NAB wrote this down?---Yes.

But that had nothing to do with the decision?---Well, I – NAB wrote down, through Corporate Affairs, a plan. I then had carriage of the matter through the meetings on Saturday, and we decided, well, in relation to this plan, the best thing to do is to ring Mr Tanzer from my level to his level as Commissioner, and to open for him and his working team whatever they needed to know if they wanted it in this report. And actually, he in – in the conversation, did note, well, it’s a point in time report.

And do you say it had nothing to do with the fact that Mr Thorburn was going to be announcing the full-year results on the Thursday?---Yes, I do say that. And, Mr Hodge, by ringing Mr Tanzer, and if his team, in following up, said, “What’s the amount of compensation? Show me the board papers. Okay, the trustee board meeting is happening on this day. We would need a few days to get our report then to be updated in various ways that we believe are consistent to that”, then it was out of our control into – into his as to that happening. So we had – if you’re asking was NAB trying to control something leading up to the Thursday, quite the opposite, Mr

Hodge, because I was opening the door to Mr Tanzer, and if he wanted to ask about those matters, which he said he would talk to his team and come back to me, then he had – he had everything at his disposal. There was nothing we could control at that moment. It – the doorway had been given to him.

5

Mr Hagger, it wasn't out of your control. You could have told them the number in writing?---I could have told them the number in writing. I said that.

And you didn't do so?---And I didn't do that.

10

And that was because you were not being candid with ASIC?---No, that's not true.

And that reflects the way in which, over a number of years, you have dealt with ASIC?---That's not true, Mr Hodge.

15

And it reflects, can I suggest – or is reflected in the way in which you went about dealing with remediation of the ASFs?---Just as we turn to that, Mr Hodge, I – I think I've said no to your propositions, and actually, when the plan service fees – when this matter was announced, ASIC said publicly that we had been cooperative with them.

20

I will go back to that with ASIC, Mr Hagger?---Please.

Can we bring up NAB – I'm sorry, ASIC.0038.0009.4847. This is a letter, Mr Hagger, that you received from ASIC on or about 5 June 2015?---Yes.

25

And you see in the second last paragraph on the first page:

In order to assist ASICs current review on charging of advice fees, we ask you, to the extent this has not already been done, to scrutinise the operation of all of the AFSS licensees that form part of the NAB Group which provide personal financial advice to retail clients, to ascertain whether there are issues related to incorrect charging of advice fees.

30

35 ?---Yes.

Now, do you say that NAB has now, as ASIC requested, scrutinised the operation of all of its AFS licensees to ascertain whether there are issues related to incorrect charging of advice fees?---Well, we have reviewed the operations of the AFS licensees to various degrees and various levels since 5 June.

40

I tender that document, Commissioner.

THE COMMISSIONER: Letter ASIC to Hagger, 5 June '15, ASIC.0038.0009.4847, exhibit 5.160.

45

**EXHIBIT #5.160 LETTER ASIC TO HAGGER DATED 05/06/2015
(ASIC.0038.0009.4847)**

5 MR HODGE: Can we bring up NAB.156.061.8966. This is a briefing planner for a meeting to occur between NAB and ASIC on 16 October 2017?---Yes.

And one of the attendees is you?---Yes.

10 Another is Ms Cook, the chief legal and commercial counsel?---Yes.

Now, can I just clarify something about this, which is up until this point in time, you have been leading the negotiations with ASIC in relation to adviser service fees?---Yes.

15

And then in about October or November of 2017, Ms Cook takes over from you?---Yes, she takes over in terms of leading those discussions. We continued to work together after that for a period on – on these matters through to about May this year. But there were three periods. There was me leading, which was effectively the period from June 2017 to October or November, and then there's a second period where Ms Cook is leading but I'm working with her, and then there's a third period, which is around – from about the end of May where – where Ms Cook has been solely leading.

20

25 Well, you had been leading it since about June of 2015, hadn't you?---Yes. Well, that's – sorry, I - - -

Yes?--- - - - focused on – Ms Cook is newer to NAB.

30 I understand. So from about June 2015 until about October 2017 you're leading it?---Yes.

And then from about October 2017 Ms Cook takes over leading it but you're still involved?---Yes.

35

And why does Ms Cook take over leading it?---Because – well, from 2015 to the – back end of 2017, there are a number of – in fact, there's a lot of discussions with ASIC on various aspects of the advice service fees to various cohorts in various areas, and then the reason – one – the other reason why I mentioned June was in June that was in relation to a more holistic plan around NAB Financial Planning, that was the first date that I put a more holistic plan to – to ASIC.

40

I'm sorry, when did you put a – what did you describe holistic plan?---Sorry, I haven't finished – I haven't explained that well, Mr Hodge. Forgive me. I will start again. Your question was why did Ms Cook take over. The reason why Ms Cook took over is that in the period of the previous six months when I had been leading, there were times that it seemed that ASIC was, with some exceptions, but broadly

45

comfortable with our approach. And then it became clear in August that they were not comfortable. And then things were quiet through September, and then ASIC wrote quite a legal letter back to us. It was clearly unhappy, and at that moment we felt it best, given that it had become a legal matter, that Ms Cook lead the
5 discussions. And she's chief legal and commercial counsel. And so in a good position to take over the lead of those discussions.

I understand. If we go to page .8969 of that document?---Yes.

10 You see there's an appendix 2, and this sets out the timeline of what has occurred in relation to adviser service fees?---Yes.

Have you looked at this document in the course of preparing to give evidence today?---No, I haven't.

15 All right. But you would have looked at this document at the time - - -?---Yes, I would have.

- - - when you were preparing for the meeting?---Yes.

20 And I just want to direct you to some items on it. So you see 5 June 2015, there's the reference to the letter we've already looked at to you, asking you to scrutinise the operation of your advice licensees?---Yes.

25 And then if we go over the page, we see 26 November 2015, letter from ASIC confirming its expectations for the fees for no service review, including that it should cover all advice licensees for the period 2008 to 2015?---Yes, I see that.

And then you see 7 November 2016:

30 *Meeting with ASIC to discuss the concept of offer of a review and the proposed timing for completion of the fees for no service review. ASIC indicated that they were not in agreement that the offer of a review constitutes service
35 delivery and noted that completion of the fees for no service review by the end of 2017 is two and a half years after ASIC first asked for the work to start.*

?---Yes.

And then if we go over the page to we see 16 December 2016:

40 *Meeting with ASIC in relation to fees for no service review – discussed NABs proposed fair exchange of value methodology.*

?---Yes.

45 Were you involved in the development of the fair exchange of value methodology?---I was aware it was being put forward. I remember the background

to it. I wasn't involved in –remembering my role I became involved in this matter in the run up to 2 June which I think there is where it mentions my name. But I was aware Mr Miller reported to me at that time, Mr Hodge.

5 And what did you understand the fair exchange of value methodology to be?---Well, what had happened, Mr Hodge, was that ASIC had said to us we're concerned that advisers are receiving fees and may not have provided the service. That's the – and they said but when we look at the legal documents, there's a number of legal arguments that you're putting forward. Can you put away legal approaches and can you tell us what is a good customer approach. And so – now, of course, NAB is known for, back in 2010/11, having a fair value approach to a number of products within the bank group. And so fair values – probably best known through what's called the NAB breakup campaign, Mr Hodge – at that time did a number of things to switch off fees and other matters. And so it was – and it works through from a customer's perspective, has there been a fair exchange of value. And if there has been a fair exchange of value, then that satisfies the arrangement. If there has not been a fair exchange of value, then something needs to be done about that. Now, I only – I don't know the specifics of what Mr Miller put forward, but that's – that's the concept of the fair exchange of value.

20 Can I suggest this: that the persistent position of ASIC was that if you have contracted to provide a particular service, you need to have actually provided that contracted service in order to be able to retain the fees for that service?---Yes, that was ASICs persistent approach.

25 And that was a position with which NAB disagreed?---Well, what NAB disagreed with was the – and this was a conversation over quite a period of time – the way to establish whether services had been provided or not. To give you an example, Mr Hodge, ASICs view was that in order to determine whether services had been provided, NAB couldn't rely on customers confirming whether the service had occurred or not. They said, "Actually, it's only the written evidence that you can look at." So we had discussions over some period of time, Mr Hodge, and I remember this because of my own meeting where we put a revised methodology to ASIC on 2 June, and we went through with them, "Here are the core beliefs that we have about service agreements, here is what we think is the appropriate remediation methodology." So throughout, we – we were having tough conversations with ASIC, and I guess you would call it a – a tough discussion or a tough challenge or a tough negotiation, but all – all this was going on, particularly with intensity through – from about May 2017 through to the October moment you mention when I – when ASIC wrote its legal letter and Ms Cook took leadership.

45 Is the legal letter you're referring to, is that the outline of contraventions?---I think so. It's – I can't remember the actual name of it but it's – it's a letter of around October 2017. It might be the letter that was given to us at the meeting that this is the briefing planner for.

Now - - -?---And if not, it would be soon thereafter. It's not in this list.

Do you say that you proposed to ASIC that you would get to retain the fees if clients confirmed that they had received the contracted services?---Yes.

And when do you say you did that?---In June 2017.

5

I see. Can we bring up ASIC.0047.0001.0087. So this is a letter of 5 July 2017 from you to Ms Macaulay?---Yes.

10 And can I suggest this: that one of the – as we’ve already agreed, one of the fundamental propositions that ASIC continued to insist upon was that if you have contracted to provide a particular service and you have not provided that service, then you do not get to retain the fee for that service?---That’s what they were saying, yes.

15 And you at your meeting with – and I think that was with Mr Kell on 2 June 2017. Does - - -?---Yes.

- - - that sound right?---Yes.

20 You at your meeting on 2 June 2017 didn’t agree with that?---Well, what we said – we actually – I don’t know whether you’ve got the exhibit, Mr Hodge, if you want to go to that – what we said was the ongoing service program had – remembering we’re going back to – I think by then it was 2009 – and – and we showed them some receipt data which was digital data. We showed them or we – we have a digital
25 footprint, if you like, of records in relation to interactions with customers. And we said there’s a \$28 million – and the number of customers attached to that which is like 48,000, or something like that – cohort where we don’t have digital evidence of interaction. So what we want to do is to find out within that cohort what has actually happened. And remembering that we’re talking about digital evidence being missing
30 here. So what we said, Mr Hodge, was we need to find more evidence here of what has actually happened, physical evidence, discussions with advisers, discussions with customers. And that was a key part of the basis of the 2 June remediation approach.

Let me summarise the approach and see if you agree with it?---Yes.

35

The first part of it was if you had some digital data evidencing interactions between the adviser and the customer, then you would get to retain the ongoing service fees?---Not – not all digital – because some digital data was, you know, of a newsletter and those kind of natures, but other digital data we showed them, and
40 ultimately they asked more questions about it, there were statements of advice, records of advice, and then other evidentiary points. And what we were talking about, at one end of the spectrum ASIC was saying, “Well, you should just pay all the fees back” with – with a very narrow interpretation of what evidence needed to be demonstrated, and at the other end of the spectrum we could have said we just
45 should retain all fees no matter what. And actually we were putting forward a proposal, which at the beginning we believed ASIC was – there was one aspect about it that they didn’t like, which was fair enough, but the rest of it at that time we

thought they – well, we had had initial feedback from them that we were on a reasonable track. But then it became apparent a couple of months later that they simply didn't agree with that, and remembering at the time, Mr Hodge, they were in similar discussions with a number of other institutions, and whilst we had no
5 visibility of that, they were looking to apply some similar bases and similar remediation programs across the – the various institutions.

Look, in the end it's a matter for you and the Commissioner, Mr Hagger. I'm not going to interrupt you when you talk, but if I ask you a question and then you begin
10 saying a whole lot of other things in order to try to justify your position that are not in answer to a question, this is going to take even longer than it is already taking?---That's fine.

Do you understand that?---Yes, I understand that. I will try to be succinct. I
15 apologise if I'm not being succinct enough for you, Mr – Mr Hodge.

There were, can I suggest, two categories of clients that you addressed as part of the remediation methodology that you put forward to ASIC in June of 2017. The first category was clients where you had some digital evidence of interactions between
20 the adviser and the client?---Yes.

And the second category was customers where you had no digital data evidencing interactions between the adviser and the client?---Yes.

25 And for the second category, what you proposed was an opt-in methodology, where the customer could say and attest, "I didn't receive any services"?---I think we had some other things in that funnel, Mr Hodge, than a pure opt-in methodology, but there were opt-in – effectively opt-in aspects to it.

30 Well, in fact, that's true, isn't it? What you also were going to seek was an attestation from the adviser?---Yes, and we were also going to review for physical records, because what we – sorry, you don't want me to expand.

You were going to review the physical records to see whether in the physical records
35 you could find any evidence of interactions?---Correct.

Mr Hagger, let me be clear, I'm happy for you to answer my questions. I would like you to answer my questions?---All right. Thank you.

40 What I'm trying to encourage you to do is answer my questions instead of giving speeches about other things in an attempt to bolster your position. Do you understand?---Mr Hodge, I understand you want me to be succinct and I will try very hard to do that in relation to making speeches to bolster my position. That's not my intention at all in these proceedings. I'm here to answer your questions and assist the
45 Commissioner.

And if we go to page .0088 of that letter?---Yes.

You see in paragraph – I’m sorry, you see at the top of the page it says:

We outline these below –

5 Which are either your range of available services or our core beliefs. It’s a bit unclear from the preceding sentence. But in any event:

We outline these below linking key aspects of the contract to our principles.

10 ?---Yes.

And then in number 2 it says:

15 *The customer understands the service relationship and is well placed to assess whether the service they receive is of value in the light of the access to the full system and services we provide.*

?---Yes.

20 And then there’s a number of dot points there?---Yes.

But the first one is:

25 *Regular reviews at agreed intervals.*

?---Yes.

30 And ASICs position was where you have contracted to provide a regular review at an agreed interval, that is a fundamental part of the service that you are providing?---Yes.

And unless you have evidence that you have provided that regular review, you should not be retaining the fee?---Yes.

35 And your response, which we see at the bottom of the page in paragraph number 2 under item 2 is:

40 *We have a combination of evidence points to demonstrate that we have discharged our contractual obligations. This approach recognises that NABs obligations under the Ongoing Service Program would be discharged by a series of interactions rather than specifically a review.*

?---Yes.

45 And that is consistent with what you have been explaining at length to the Commissioner, which is the fact that you contracted to provide a review did not, as far as you were concerned, mean that you needed to have provided a review in order

to retain the fee?---No, what I'm – what I'm saying is we were developing a remediation program which we felt was pragmatic and able to get to the heart of what had actually gone on between an adviser and a client. And so, for example, ASIC was saying, "Well, an agreed interval, we will take that as one year. A regular
5 review, we will take that as a written report." So each – so both us and ASIC were reading different things into different words, and the – the matter got further complicated, Mr Hodge, by the fact that we had nine ongoing service program contracts, each with slightly different wording. So when we presented the – sorry, you don't want me to - - -

10 If we go over the page to page .0089?---Yes.

We see, in the middle of the page, a paragraph which says:

15 *Further, as noted in our 2 June presentation, we have identified a segment amounting to approximately \$28 million in revenue where there is no digital interaction in the duration of the customer relationship over the period in question.*

20 ?---Yes.

And in that case, in order to retain the fees, what you were proposing was that (a) you would look to see whether you could find physical evidence - - -?---Yes.

25 - - - that there had been an interaction?---Yes.

And if there had been physical evidence, then you would consider that you didn't need to repay the fees?---Yes.

30 And (b) you would seek adviser attestations as to whether or not they had provided the services?---Yes.

And if they attested that they had provided the services, then you wouldn't see a reason to repay the fees?---Yes. Still subject to assurance, but yes.

35 And third, if all of those hurdles failed, then you would ask the customers to attest that they had not received the services?---Yes.

40 And if they were prepared to do that, then you would be prepared to refund the fees. Actually – now, that's not true, is it?---Yes.

If they were prepared to do that and subject to a further review that you did, you were satisfied that no services had been provided, then you would be prepared to refund the fees?---That's a long sentence, Mr Hodge. Perhaps - - -

45 You explain it in your words, Mr Hagger?---Sure, Mr Hodge. The – what you're referring to, by the way, is the part of this broader remediation program which ASIC

didn't like, and they said so quite soon, and we said we can be flexible about this. The – what we were saying was for this – we have a cohort without digital records, and, of course, remembering this goes back to 2009, so there's a lot of things in boxes. Once we had gone through those records, we would then go to the adviser, and then if that – if neither of those two demonstrated service with assurance, we would go to the customer. And if the customer said there has been service – sorry, if the customer said there hasn't been service, we would refund the fees. And – but what we said which ASIC didn't like, and – and we said, "Fair enough", was that if – what we said was that if we didn't hear from customers, we would assume they were happy. And we had a fundamental belief, which I still hold today, that customers tend to know whether service has been provided or not. They may not know whether advice is appropriate or inappropriate, but we have a stronger belief about the role of customers and customers knowing whether they've had service or not, and we wanted to build that into our program.

15 THE COMMISSIONER: Well, Mr Hagger, there's this point about it: the trustee had paid out trust money, hadn't it?---This is not a trust matter, Mr Hayne. This is a – in the advice licences realm.

20 MR HODGE: Now, that's not quite right, is it? The – in many of the cases, the money is deducted - - -?---Yes.

- - - from the trust and paid by the trustee to the advice licensee?---Yes, these matters were in relation to NAB FP as a licence – as an advice licensee. That's what we're talking about here. Now, I agree with you, Mr Hodge, if this shortcuts it, that there are NAB FP clients who have their money in MLC Super and that the – under various arrangements, those fees are deducted from funds.

30 By the trustee?---By the trustee.

Yes.

35 THE COMMISSIONER: That is trust money had been paid out; is that right?---For – for that cohort, Mr Hayne.

In payment of fees for services; is that right?---Yes.

40 Services which it was said had not been provided?---Well, that was what was under review - - -

That was the question?--- - - - Commissioner, yes.

45 It was a matter for the trustee, was it not, to determine whether the money it had paid out had been paid out properly?---Yes, that is a matter for the trustee, Commissioner. What ASIC was doing here was a separate exercise of going to the advice licensee and saying, "Show us that these services have been provided".

Yes.

MR HODGE: And then the last point of note on this page and the other matter of disagreement with ASIC was that ASICs position was if you have agreed to provide
5 an annual review, then you need to have provided a review each year?---Yes, that was their position. Well, that changed over time, but their – but that was their position in these – well, actually, in these conversations, they were saying – between 2 June and this letter, 5 July, we were under the impression that ASIC was broadly comfortable with our remediation program, but unhappy about the matter we just –
10 you and I just talked about, Mr Hodge.

That matter being NAB didn't want to review whether it had actually provided the agreed annual review in every year?---No, that matter – the matter they were specific on that they – at this time that they were not happy with was that in circumstances
15 where we had no digital data, no physical records - - -

I see. The opt-in problem?---Yes. That was the bit that they said that they were unhappy about.

20 You thought that you had got them to come round on the issue of whether or not you had actually provided the specific contracted services?---Well, to be fair to them, they were still doing their work, but on 7 June, I think it was, I had had a conversation with Mr Kell, which I reported to the NAB board, and the NAB board was meeting that day, which was a first reaction to our proposal, and so our – our
25 understanding at this point – it changed later, Mr Hodge, but our understanding at this point was that ASIC was broadly happy with the direction we were headed, but unhappy about the specific item that you just raised.

And I think you're talking about a specific item, which is what happens where you don't have any digital data for customers. There's another issue that ultimately arises, which is NAB did not want to have to review whether or not it had provided the annual review in every year of the customer relationship?---Yes.
30

It wanted to say, "We will look at the whole of the customer relationship"?---Yes.
35

Take a holistic approach, I think was the word - - -?---Yes.

- - - that you used before?---Yes.

40 I tender that document, Commissioner.

THE COMMISSIONER: Briefing – this is the letter, is it?

MR HODGE: Yes, Commissioner.
45

THE COMMISSIONER: What about the briefing planner? Is that in evidence already?

MR HODGE: It's not, but I will tender that as well, Commissioner.

THE COMMISSIONER: Briefing planner NAB ASIC meeting 16 October '17, NAB.156.0189.006, exhibit 5.161.

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EXHIBIT #5.161 BRIEFING PLANNER NAB ASIC MEETING DATED 16/10/2017 (NAB.156.0189.006)

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THE COMMISSIONER: Exhibit 5.162 is letter 5 July '17, Hagger to Macaulay ASIC.0047.0001.0087, exhibit 5.162.

15 **EXHIBIT #5.162 LETTER, HAGGER TO MACAULAY DATED 05/07/2017 (ASIC.0047.0001.0087)**

MR HODGE: Thank you, Commissioner. And then in October, you received the outline of contraventions from ASIC?---Yes. Yes.

20

And that set out the remediation methodology that ASIC insisted upon?---I can't remember whether it had all the – perhaps we can go to that, Mr Hodge.

25 ASIC.0036.0002.2531. And if we go to page .2544. See this is the Methodology For Further Reviews?---Yes.

So this is the methodology that ASIC insisted upon?---Yes.

30 And this was in October 2017?---Yes.

And ultimately, at the end of June of this year, NAB agreed to use this methodology in relation to NAB Financial Planning?---I - - -

35 Or you're not sure?---It's much closer – I don't know whether it's exactly the same, Mr Hodge, but it's – I – I do know that the – that in June this year or July this – whatever the date is – that NAB has put forward a methodology which is along the lines of – and perhaps more expansive than what ASIC has got in this document.

40 For NAB Financial Planning?---For NAB financial Planning.

Has it agreed to it for its other advice licensees yet?---Not as yet.

45 And the methodology that is much closer to what ASIC was proposing will fundamentally require NAB to review whether it actually provided a regular review where it contracted to provide a regular review?---Yes, it – it will require – and we're

standing up the program now – it will require very substantial documentary searches and – and such aspects.

5 And that agreement comes three years after ASIC further wrote to you and asked you to scrutinise the operation of your advice licensees?---Yes.

10 What do you think that period of delay says about the culture of NAB Wealth?---A few things. From a delay perspective – I will use that word – we had tough discussions with ASIC along the way, and so from a cultural perspective, it shows that there were some things that we were holding dear which ASIC did not hold dear, for example, the role of customers in the methodology.

15 What ASIC holds dear is that if you contract to provide a service, you have to provide that service if you want the fee for it?---Yes, and we – we agree with that, Mr Hodge.

20 Now, in June of this year?---Yes, but where most of the discussions were about, Mr Hodge, was, well, what exactly does the service promise, what is the documentary evidence, and what is the oral evidence which is appropriate in the circumstances, and we had some differences with ASIC along the way, and there were some, as I say, some tough discussions. Ultimately, NAB has put forward a methodology in keeping with this – this methodology here is not something we knew back in June 2015, but what we've put forward is similar and, in some ways, more expansive than what's here.

25 NAB has also recently admitted to ASIC that on 84 occasions between 2014 and 2017 it failed to provide a significant breach notice within 10 business days of becoming aware of the breach. Are you aware of that?---I think there's a reference – I don't know the exact number, Mr Hodge, but there's a reference in here to breach – 30 to a number of breaches not reported within a 10-day period, mostly in those earlier years, but there is a number.

35 Are you aware that 83 of the 84 breaches related to NAB Wealth's business?---No, I didn't know that number, but I'm not surprised that that's the number.

40 Why are you not surprised, Mr Hagger?---Because Wealth was the area – and I knew this coming in in 2013 to be group executive for NAB Wealth, I knew there were a lot of things that needed to be fixed, and, actually, breach reporting was one of them. And through a project called Project Sunrise, we invested a lot of money in 40 improving processes under ASICs watch, and they saw the improvements that we made in breach reporting, and, actually, our breach reporting data in recent times has been – you know, they – they have – has been good, but not perfect, but a substantial improvement on where it was, and – and ASIC has noted that.

45 You know that failure to report a significant breach within 10-business days is a contravention of section 912D of the Corporations Act?---That's a legal question, Mr Hodge, but I know that there's a 10-day requirement. I just don't know what - - -

You don't know if it's the Corporations Act?---I don't know what the – I know there's 10 days – 10 – is it 10 working days – to report - - -

5 Do you know that the Corporations Act requires you to report a significant breach within 10 business days?---Yes, I do. The point I'm making is I don't know the sections or the – of the Corporations Act. That's a legal – I'm not involved in breach – with the Breach Review Committee in its workings.

10 Does NAB regard breaches of the Corporations Act as serious?---Yes.

Commissioner, I don't have any further questions.

THE COMMISSIONER: Yes. Thank you. Yes, Mr Thomas.

15 MR THOMAS: No re-examination, Commissioner.

THE COMMISSIONER: Yes. Thank you. Mr Hagger, you may step down.

20 MR THOMAS: Can Mr Hagger please be excused from further attendance.

THE COMMISSIONER: Is there any reason not to, Mr Hodge?

MR HODGE: No, Commissioner, no reason not to.

25 THE COMMISSIONER: You're excused from further attendance, Mr Hagger?---Thank you, Commissioner.

30 **<THE WITNESS WITHDREW** **[3.42 pm]**

MR HODGE: Commissioner, the next witness is Mr Pinto from Suncorp. Could we - - -

35 THE COMMISSIONER: Do you want to – if I come back at quarter to - - -

MR HODGE: Thank you, Commissioner.

40 THE COMMISSIONER: - - - to allow counsel to arrange their papers at the table.

MR HODGE: Thank you.

THE COMMISSIONER: Yes. Quarter to 4.

45 **ADJOURNED** **[3.42 pm]**

RESUMED

[3.46 pm]

5 MR HODGE: Commissioner, the next witness is Mr Pinto.

THE COMMISSIONER: Yes. Is Mr Pinto in court?

10 <MAURIZIO PINTO, SWORN

[3.47 pm]

<EXAMINATION-IN-CHIEF BY MR KIRK

15 THE COMMISSIONER: Thank you very much. Do sit down. Yes, Mr Kirk.

MR KIRK: Thank you, Commissioner.

20 Your name is Maurizio Pinto?---Yes.

Your professional address is 10 Shelley Street, Sydney, in the state of New South Wales?---Yes.

25 You currently hold the position of executive manager of the office of the superannuation trustee within Suncorp Portfolio Services Limited?---Yes.

You've received a summons to come and give evidence at this Royal Commission?---Yes.

30 Do you have the original of the summons there with you?---Yes, I do.

I tender that, Commissioner.

35 THE COMMISSIONER: Exhibit 5.163, summons to Mr Pinto.

EXHIBIT #5.163 SUMMONS TO MR PINTO

40 MR KIRK: Mr Pinto, you have prepared two statements to assist the Royal Commission. Correct?---Yes.

One dated 5 August 2018?---Yes.

45 And one dated 6 August 2018?---Yes.

I think you had a few minor corrections you wanted to make to your first statement, the one of 5 August 2018. Is that correct?---Yes.

5 I think the first one was at page 21, paragraph 25. Commissioner, I might just lead here if that's all right.

THE COMMISSIONER: Yes.

10 MR KIRK: In the last line, there's a reference to the exhibit of tab 8A, confidential exhibit MP-2. Should that in fact be exhibit MP-1?---Yes.

15 Thank you. Secondly, if you could turn to page 50, at paragraph 46, in the last line there's a reference to tab 22 of confidential exhibit MP-2. Should that in fact be a reference to tab 24?---Yes.

THE COMMISSIONER: If you could make each of these amendments as we go and initial them as you go, Mr Pinto?---Yes.

20 Thank you very much. Yes, sorry, do go on.

MR KIRK: And then if you could turn, please, to page 63, Mr Pinto, paragraph 53. In the fourth last line there's a reference to tab 22 of exhibit MP-2. Should that in fact be a reference to tab 25?---Yes.

25 If you could make that change, please. And finally at page 67, paragraph 67, in the third line where it refers to tab 30 of exhibit EAC-1, should that in fact be reference to tab 27?---Yes.

30 Subject to those corrections, Mr Pinto, are your two statements true and correct to the best of your knowledge and belief?---Yes.

I tender those two statements, Commissioner.

35 THE COMMISSIONER: The statement of 5 August '18 of Mr Pinto will be exhibit 5.164.

EXHIBIT #5.164 STATEMENT OF MR PINTO DATED 05/08/2018

40 THE COMMISSIONER: The statement of 6 August of Mr Pinto will be exhibit 5.165.

EXHIBIT #5.165 STATEMENT OF MR PINTO DATED 06/08/2018

MR KIRK: If it please the Commission.

THE COMMISSIONER: Thank you. Yes, Mr Hodge.

5 MR HODGE: Thank you, Commissioner.

<CROSS-EXAMINATION BY MR HODGE

[3.51 pm]

10

MR HODGE: Mr Pinto, Suncorp Portfolio Services is the trustee of the superannuation fund operated by Suncorp?---Yes.

15 And at some point in time in the past, Suncorp Portfolio Services invested all of the assets of the trust in life insurance policies issued by another Suncorp entity?---Not all of the assets but some of the assets, yes.

And that was invested in what's referred to as SLSL. Is that right?---Yes.

20 And that's Suncorp Life and Superannuation Limited?---Yes.

And is it still the case that there are assets of the fund invested with SLSL as issuer of life insurance policies?---Yes.

25 And those policies then provide that SLSL, the issuer of the life insurance policies, will then invest that money in other ways for the benefit of the members?---Yes.

And in addition, SPSL, which is the trustee, has other assets of the fund which it invests in other ways?---Yes.

30

And how does it invest those other moneys?---So it invests them through the Suncorp Group Trust for which Suncorp Corporate Services Proprietary Limited is the investment manager.

35 And who is the trustee of that trust?---Suncorp Funds Proprietary Limited.

Okay. And there is – and we should be clear about this – I referred to it as if there's a single fund. There's actually two trusts, there's the Suncorp Master Trust and the Suncorp Pooled Superannuation Trust?---Yes.

40

And SPSL, that is Suncorp Portfolio Services, is the trustee of both the Suncorp Master Trust and the Suncorp Pooled Superannuation Trust?---Yes.

45 And, again, so that we can attempt to understand this arrangement, what proportion of the assets are invested in life insurance policies with SLSL?---So I – I don't think I have that information readily at hand.

Has it changed over time?---Yes, it has.

5 Has there been a decrease in the amount of assets invested through the life insurance policies and an increase in the amount of assets invested through the group trust?---Yes.

And there's then a tax surplus. You know what I'm talking about when I talk about the tax surplus?---Yes.

10 And the tax surplus arises in this way, as I understand it: that Suncorp Portfolio Services has to collect 15 per cent of every superannuation contribution and remit that to the Tax Office?---Where that contribution is a taxable contribution, yes.

15 But Suncorp Portfolio Service, as trustee, also has available to it certain tax deductions?---Yes.

And those tax deductions, for example, will arise from insurance premiums or certain types of insurance premiums?---Yes.

20 And the consequence is that Suncorp Portfolio Services, as trustee of the superannuation fund, ends up with a surplus where it has collected the 15 per cent of taxable contributions but it doesn't need to remit all of those – the full value of that 15 per cent of taxable contributions to the Tax Office?---So by way of context, the – the Suncorp Master Trust receives two types of contributions, if you like. The first 25 type are the taxable contributions. In that example, contributions tax is deducted at 15 per cent from the taxable contribution, and a rebate is then paid back to the member for the benefit – or equivalent to the benefit of the tax deduction that has arisen from the fund claiming a deduction for the insurance premium. However, 30 there are instances where members who are incurring insurance premiums in their accounts are not making taxable contributions to their accounts. So they could be making non-taxable contributions, or they could be making a rollover, or they could be funding the cost of the premium through the existing account balance. In that scenario, no contributions tax is deducted from the member's account. However, 35 when the fund does submit its tax return at the end of the year, it is entitled to claim a tax deduction for the premiums, and it is in that scenario that the credit that is received by the fund is held in the contributions tax surplus of the fund.

40 And the consequence is there ends up being a pool of money that the trustee has collected as something that it would need to remit to the Tax Office but which it doesn't need to remit to the Tax Office?---No, I don't think it needs to remit tax to the Tax Office because the moneys that have been used to effectively fund the cost of the premiums are non-taxable.

45 Let me put it back to you in a slightly simpler way. There is an amount that the trustee has to remit to the Tax Office. Each year it has to remit tax to the Tax Office?---Yes.

- And each year, at least for the last five years, Suncorp has ended up collecting more money for the purpose of remitting it to the Tax Office than it in fact ends up needing to remit to the Tax Office?---No, I don't think it's collecting more money that it needs. It's – it's more that in relation to - - -
- 5 Can I put it into the passive voice and see if that helps. There is, in fact, more money collected than needs to be remitted?---I'm – I'm not sure that I necessarily agree with that – with that position.
- 10 It's not – your point is it's not actively collected?---Correct.
- Is that the issue?---Correct.
- 15 It's just that there is – let me use a different verb. There is an amount allocated to be remitted to the Tax Office and that amount ends up being greater than the amount that actually needs to be remitted to the Tax Office?---I think to my way of thinking, the – the fund is entitled to tax deductions which give rise to a refund.
- 20 Yes?---So it's not that it has necessarily collected more tax. It's more that because it is claiming a tax deduction for the insurance premiums, that in turn gives rise to a tax refund.
- All right. Let's call it a tax refund. I think in your papers you refer to it as a tax surplus?---Yes.
- 25 But you mean – when you talk about a tax refund, do you mean the same thing as the tax surplus. Is that right?---Yes.
- 30 And one way of dealing with that refund or surplus would be to return it to the members?---Yes, that would be one potential option.
- And that's certainly what many other super funds do?---I'm not – not sure what other funds do.
- 35 You don't return it to the members?---No.
- What you do is pay it, that is the trustee, pays it to SLSL, Suncorp Life and Superannuation Limited?---Yes.
- 40 And it has done that at least as far back as we have looked which is only back to 2013?---Yes.
- And it has done that pursuant to an agreement that was entered into between Suncorp Life and Superannuation Limited and Suncorp Portfolio Services?---Yes.
- 45

And that agreement – maybe if we bring that up, that might help. Can we bring up SUN.1506.0018.0001. So this is a board submission to Suncorp Portfolio Services dated 18 April 2013?---Yes.

5 And you see its title is payment to Suncorp Life and Superannuation Limited of the FY12 contributions tax surplus?---Yes.

And what's sought is approval from the board to pay the amount of the surplus to Suncorp Life and Superannuation Limited?---Yes.

10

And in the year ending 30 June 2012, the surplus was \$8.1 million?---Yes.

And each year, at least until this year, SPSL, that is the trustee, has approved the payment of the surplus over to Suncorp Life and Superannuation Limited?---Yes.

15

And in this year there has been a proposal put to the board to pay over the surplus to Suncorp Life and Superannuation Limited?---Sorry, when you say "in this year" in the - - -

20 In 2018, there has been a proposal put to the board to pay over the surplus to Suncorp Life and Superannuation Limited?---No, not in 2018.

Let's just make sure – we will come back to that in a moment. Can we go to page .0009 of that document. So this is a services deed between Asteron Portfolio Services Limited and Asteron Life Limited?---Yes.

25

And Asteron Portfolio Services Limited is the name of what is now Suncorp Portfolio Services Limited?---Yes.

30 And Asteron Life Limited is what is now called Suncorp Life and Superannuation Limited?---Yes.

And if we go to page 0013, you see this is an agreement to provide additional services?---Yes.

35

And the fee that is payable in clause 3 for the additional services is an amount equal to the balance of the contributions tax provision at the end of the relevant financial year?---Yes.

40 And so the agreement that had been made between these companies some years ago was that whatever surplus there was would be paid over to Suncorp Life and Superannuation Limited in exchange for what are described as "additional services"?---Yes.

45 And if we then go back to page .0011, we see additional services are defined to mean:

The services listed in schedules 1 to 6.

Do you see that?---Yes.

5 And if we then go to page .0018. See these are the Schedule 1 Administration Services?---Yes.

10 And these appear to be, effectively, every administration service that would be involved in administering a superannuation fund. It goes on for three pages?---I'm not sure if it's every administration service.

I see. But it seems like it would cover a lot of the services. Do you agree?---Yes, it does cover a number of services.

15 And then if we go to schedule 2, which is .0021. So schedule 2 is Fund Accounting Services. Do you agree?---Yes.

20 And if we go to schedule 4 – schedule 3 seems to have been left out of this copy. Let's – Commissioner, I will tender that document and bring up a better copy of this. So this is the 2013 paper.

THE COMMISSIONER: Paper board submission of 18 April '13, SUN.1506.0018.0001, is exhibit 5.166.

25

**EXHIBIT #5.166 BOARD SUBMISSION DATED 18/04/2013
(SUN.1506.0018.0001)**

30 MR HODGE: And then can we bring up SUN.1501.0005.5563. So this is the 2017 board submission. See that, Mr Pinto?---Yes.

35 And then if we go to page .5576. This is, again, the same services deed that we were looking at a moment ago?---Yes.

And if we go to page .5594, this is schedule 1 again, the Administration Services?---Yes.

40 And I think I suggested before the Administration Services take three pages. In fact, they're five pages, I would suggest. Does that sound right or you're not sure?---I – I'm not sure. I'm looking at the first page.

Have you looked at this agreement before, Mr Pinto?---Yes.

45 Are you familiar with this agreement?---I'm not close to the agreement, but I have seen it before.

Are you – I’m sorry, I may have misunderstood your role. Are you the head of the Office of the Trustee?---Yes.

5 And this is an agreement by which SLPL agrees to provide what are defined as the additional services to the company for which you are the head of the Office of the Trustee?---Yes.

10 Is there some monitoring that is done of the provision of the additional services?---Yes, annually, there is a submission to the trustee board which details the additional services that have been provided.

This document that we’re looking at now, this is the submission, isn’t it? If we go back to the first page, .5563?---Yes.

15 That’s the type of submission you’re talking about?---Yes.

This is the one for – made in June 2017 in respect of the 2016 financial year?---Yes.

20 All right. If we just go back to the agreement. We’ve looked already at fund accounting. If we go to .5601, there’s a schedule 3, the Investment Services?---Yes.

And then we go over the page, schedule 4, .5602. This is Compliance Services. It includes, you will see, at the top of the page:

25 *Ensuring the services are conducted in a manner which complies with the relevant law, the trust deed, compliance procedures, current accounting practices and standards, and other applicable legislation unless the trustee and the life company specifically agree otherwise.*

30 ?---Yes.

You see that? And if we go back to page .5582, see the definition of “services” which is:

35 *The additional services plus any administration services provided to the trustee under the policies.*

Yes?---Yes.

40 And the policies are those life insurance policies that we referred to earlier through which investments are made by SPSL? I’m sorry, I said SPSL. Are made by SLSL, Suncorp Life and Superannuation Limited?---Yes.

45 And if we go then to page .5604. So this is schedule 5 which sets out Other Services. This includes:

Creating and maintaining an up-to-date fund administration guide.

You see that?---Yes.

And then if we go to page 5606. I'm sorry, 5605. This is Specified Expenses that are to be paid by the life company?---Yes.

5 And the life company is Suncorp Life and Superannuation Limited?---Yes.

So that it would seem like what Suncorp Life and Superannuation Limited has agreed to do is to pay all of these expenses which include expenses in relation to general fund administration expenses?---Yes.

10 And promotional expenses?---Yes.

And professional costs?---Yes.

15 And the preparation and dispatch of annual reports and annual member statements?---Yes.

And audit fees?---Yes.

20 And APRA fees?---Yes.

And APRA levies?---Yes.

25 And you will recall the definition of additional services is:

The services listed in schedules 1 to 6 inclusive, including payment of the specified expenses.

30 Would you like to see that again? Bring up .5580. Do you see that?---Yes.

So can I suggest on the face of this agreement, it would seem to mean Suncorp Life and Superannuation Limited is going to provide all of the administration services and pay all the costs of running the fund in exchange for the tax surplus?---Yes.

35 Is that what has happened?---Yes. So that the – the life company has provided these services in return for the contributions tax surplus.

And are there any other services that need to be provided other than those provided pursuant to this agreement?---I'm not sure if there are any additional services that need to be provided.

40 Well, one way that the office of the trustee would know this, can I suggest, is if it had some sort of reporting or oversight over what services are provided to it by its related companies?---Yes. So reporting is provided on a quarterly basis to the trustee board, which would encompass these services which are disclosed in this agreement.

45

And so is there a monitoring, for example, of satisfactory service delivery?---Yes.

And are there service level requirements?---Yes.

5 And do they apply specifically in relation to the additional services, as defined in the deed?---Yes.

And do those services provided as additional services under the deed encompass all of the services that are needed to administer the super funds?---Look, I'm not sure if they encompass all of the services. I'm not sure that they would.

Well, again, one way, can I suggest, that the trustee would know that was if there was some division between – or identification of other services, either that SLSL – I'm sorry, SPSL provided to itself in order to administer the trust fund, or that it received from other companies to administer the trust fund?---So there is reporting provided to the trustee on other services which are provided to its members.

I'm sorry, can you just say that again? You said SPSL provided to its – I'm sorry, that's my question. So there is reporting provided to the trustee on other services which are provided to its members?---Yes.

Provided by whom to its members?---So SPSL has a number of service providers of which SLSL is one. It has, for example, a service provider which provides investment management services.

Yes?---It has a provider which provides inbound banking services. So SLSL is one provider, but it has a number of other providers who also report to the board on a quarterly basis.

30 Are there any other providers of administration services?---Yes. SPSL provides administration services to 75 per cent of its membership. SLSL provides administration services to the remaining 25 per cent.

Now, that's now since there has been this rebalancing of the division between the life insurance policies and the investments managed through the group trust. Is that right?---Yes.

Before that rebalancing occurred, more of the administration was supplied by SLSL?---Yes. Prior to the recent transfer, SLSL was administering 45 per cent of the membership and SPSL was administering the remaining 55 per cent.

And just so I can make sure I've understood, though, has there been some change in the actual funds, that is, back – and if we go to page .5579. You see recital A:

45 *The trustee is the trustee of the Asteron Life Superannuation Fund, Optimum Superannuation Master Plan and the Tyndall Superannuation Plan.*

?---Yes.

Do those three funds still exist?---No.

5 Do any of them still exist?---These three funds became divisions of the Suncorp Master Trust.

Yes. And when did that occur?---In 2008.

10 All right. And then as a consequence – not straightaway, but eventually there was a deed of amendment to the services deed?---Yes.

And if we bring up page .5607. So this is the deed of amendment. You can see by now the names have changed of the entities?---Yes.

15

And if we go to page .5608. Do you see this is dated 22 August 2014?---Yes.

And it refers to the trustee in respect of certain superannuation funds?---Yes.

20 And so that I understand, by the time this deed was entered into, those funds didn't exist any more?---The Asteron – what was the Asteron Life Superannuation Fund effectively became the Suncorp Master Trust.

I understand. Was it – was it like this: did the Asteron Life Superannuation Fund become the Suncorp Master Trust and the other two funds were effectively moved into that fund by successor fund transfer?---Yes.

25

And so to go back to the answer you gave before where you indicated that none of the funds existed any more, that's not quite accurate. One of them continues to exist and the other two have become divisions of that one fund?---Yes.

30

And so the present state of affairs is that Suncorp Life and Superannuation Limited has agreed to provide the administration services in relation to what is now the Suncorp Master Trust?---Yes.

35

And it has agreed to accept as payment - - -

MR KIRK: I'm not quite sure he quite finished that answer, actually.

40 THE WITNESS: But in respect of these three divisions of the Suncorp Master Trust.

MR HODGE: Now, where does that – where do we see that. You might need a copy of the agreement. Commissioner, just given the time, can I suggest that Mr Pinto have overnight to think about the answer to this question and come back and answer it in the morning.

45

THE COMMISSIONER: Yes. Overnight, Mr Pinto, if Mr Kirk and those instructing you can provide you with a copy of the agreement you can have time to look at it, think about it and we will return to that tomorrow morning at 9.30.

5 MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: 9.30 tomorrow, Mr Pinto. Yes.

10 <THE WITNESS WITHDREW [4.29 pm]

MATTER ADJOURNED at 4.29 pm UNTIL TUESDAY, 14 AUGUST 2018

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