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## **TRANSCRIPT OF PROCEEDINGS**

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O/N H-919877

**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**

**9.30 AM, TUESDAY, 14 AUGUST 2018**

**Continued from 13.8.18**

**DAY 46**

**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 J. KIRK SC appears for Suncorp**

**MR J. DELANEY QC appears for Hostplus**

**MR S. FINCH SC appears with MS Z. HILLMAN for Colonial First State**

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Commissioner, we're continuing the evidence of Mr Pinto.

5 THE COMMISSIONER: Mr Pinto, would you be good enough to come back into the witness box, please.

10 <MAURIZIO PINTO, ON FORMER OATH [9.30 am]

<CROSS-EXAMINATION BY MR HODGE

15 THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner.

20 Mr Pinto, you recall yesterday afternoon when we finished you were going to go away and have a look at the amendment to the additional services deed?---Yes.

And you recall that the issue that we had been discussing was whether the additional services are in relation to the whole of the Suncorp Master Trust or just three divisions of the Suncorp Master Trust?---Yes.

25 And you recall that you had indicated yesterday afternoon that you believe the additional services were only in relation to three particular divisions of the Suncorp Master Trust?---Yes.

30 And you recall you were going to go away and look at the deed and see whether there was something in the deed that reflected your belief?---Yes.

And did you look at the deed?---Yes.

35 And did you find anything in the deed that reflected your belief?---No.

And do you still believe that the additional services relate only to three divisions of the Suncorp Master Trust?---No.

40 And why do you no longer believe that?---The effect of the – when – when the Asteron Life Super Fund became the Suncorp Master Trust, the – the deed then applied to the Suncorp Master Trust.

45 Can I put that back to you and see whether you agree. What you're saying is the deed applied to the entirety of the pre-existing Asteron Superannuation Trust?---Yes.

And that Asteron Trust became the Suncorp Master Trust?---Yes.

And, therefore, the deed must apply to the entirety of the Suncorp Master Trust?---Yes.

5

And can we bring up SUN.1501.0005.5563. While that's coming up, Mr Pinto, did it surprise you to realise overnight that this deed provided for services in relation to the entirety of the Suncorp Master Trust and not just three divisions?---No, on reflection, it does – by virtue of the Asteron Life Super Fund becoming the Suncorp Master Trust, it applies to the Suncorp Master Trust.

10

Yes. But consider these things – tell me if you agree – you're the head of the Office of the Trustee?---Yes.

15 This is an agreement by which a related company, Suncorp Life and Superannuation Limited, provides the additional services to Suncorp Portfolio Services Limited?---Yes.

20 You didn't realise until overnight that those services were provided in relation to the entirety of the Suncorp Master Trust rather than just some divisions of the Suncorp Master Trust?---I think, by way of context, at a practical level, SLSL provides administration services to the three former super funds which are now divisions of the Suncorp Master Trust. So to the members of those – of those divisions. The administration services for members of the remaining divisions of the Suncorp Master Trust are provided by SPSL, in a practical sense.

25

I want to try to understand your answer. The additional services, which is a defined term in the deed – do you understand that they now relate to the entirety of the Suncorp Master Trust or, in practical terms, do they only relate to three divisions of the Suncorp Master Trust?---In practical terms, they apply to the three divisions of the Suncorp Master Trust.

30

That's your understanding?---Yes.

35 Can we go to page .5572. So this is appendix 5 to the board submission that we were looking at yesterday afternoon?---Yes.

And do you see, halfway down the page, there's a note with the numeral 4, and then "FUA"?---Yes.

40

And FUA stands for funds under administration?---Yes.

And do you see that the words written under that heading are:

45 *The additional services provided relate to the SMT –*

that's the Suncorp Master Trust?---Yes.

Continuing:

*...in its entirety and is not limited to the SLSL –*

5 that's the Suncorp Life and Superannuation Limited?---Yes.

Continuing:

10 *... administered divisions, hence using the total SMT FUA is considered appropriate.*

?---Yes.

15 So this explanation in the board paper is different from your understanding?---I think – I think what I'm saying is that these additional services, whilst they do apply to the Suncorp Master Trust, SPS – SLSL is not the only administrator providing administration services to the Suncorp Master Trust.

20 If you look on this page, do you see at the top of the page it says:

*Administration fees paid by the Suncorp Master Trust to Suncorp Life and Superannuation Limited.*

25 ?---Yes.

And do you see then below that it shows those fees as a percentage of the administered divisions?---Yes.

30 And let me make sure we agree. The administration fees are different from and in addition to the tax surplus paid in exchange for the additional services?---Yes.

So Suncorp Life and Superannuation Limited provides administration services to the Suncorp Master Trust in respect of the three divisions that it administers?---Yes.

35 And we see in FY14, that administration fee amounted to 1.1 per cent of the assets in those three divisions?---Yes.

40 And in FY15, that administration fee amounted to .99 per cent of the assets in those three divisions?---Yes.

And in FY16, that administration fee amounted to .92 per cent of the assets in those divisions?---Yes.

45 And then for any other divisions of the Suncorp Master Trust, there are administration fees received by other Suncorp entities?---Yes.

Not Suncorp Portfolio Services Limited?---No, by Suncorp Portfolio Services Limited.

5 I see. Suncorp Portfolio Services Limited performs its own administration of the other divisions?---Yes.

And it retains the administration fees for those other divisions?---Yes.

10 But on top of that, what we see in this document, is that there is also the fees for what are defined as the “additional services”?---Yes.

And that fee is the tax surplus?---Yes.

15 And that fee is – or that tax surplus is paid thus far each year in its entirety over to Suncorp Life and Superannuation Limited?---Yes.

20 So that the net effect appears to be that for, say, FY16, a member of one of the three divisions administered by Suncorp Life and Superannuation Limited would end up paying a 1.05 per cent administration fee?---Sorry, that was in relation to?

The three divisions that Suncorp Life and Superannuation Limited administers?---And – and, sorry, which year was – was it?

25 In FY16. Point 92 per cent plus .13 per cent?---Yes.

30 And that seems very high, but that’s actually lower than it was two years earlier, because two years earlier a member of one of those three divisions would have ended up paying a 1.27 per cent administration fee?---The effect of the additional services would equate to that, yes.

But because of the way that the fee is paid for the additional services, that wouldn’t be obvious to members?---No.

35 Because when they read the product disclosure statements that are put out by Suncorp, they don’t identify the amount or percentage paid for these additional services?---No.

40 And when Suncorp does its reporting to APRA, does it report under some category this amount for the tax surplus that is paid for the additional services?---Look, I don’t know.

Are you responsible for the reporting to APRA?---No, I’m not.

45 Who is responsible for the reporting to APRA for the superannuation trust?---Our finance function.

And you haven’t discussed with them how they report that to APRA?---No.

And can I suggest one of the other things that doesn't occur is that there is no attempt to map how the defined additional services fit with any other administration services that are provided by either Suncorp Portfolio Services Limited or Suncorp Life and Superannuation Limited?---So I think in the annual – in the annual reporting to the board, there is disclosure of the – certainly the additional services that have been provided, and there is consideration of the – the other services that have been provided by – by the – to the members during the year.

Perhaps if we take this in stages. You made the point that Suncorp Life and Superannuation Limited provides administration services in respect of the three divisions of the Suncorp Master Trust that Suncorp Life and Superannuation Limited administers?---Yes.

What is the agreement pursuant to which those services are provided?---So – so the agreement is contained within the policies that have been issued by SLSL to – to SPSL.

All right. Now, we issued a notice – or the Commission issued – the Commissioner signed a notice in order to understand this. Can we bring up one of those policies. Can we bring up SUN.1505.0003.0066. While that's coming up, have you yourself looked at these policies, Mr Pinto?---I have.

Okay. And you've considered what services are contracted to be provided?---Yes.

And is that something you did recently for the purpose of giving evidence, or something that you've done on earlier occasions as part of your role as the head of the Office of the Trustee?---Look, I have done it recently, but also on prior occasions.

So you see what we've got up on the screen is a group insurance policy?---Yes.

And it's issued by what was at that time Asteron Life Limited to Asteron Portfolio Services Limited?---Yes.

And as we agreed yesterday, Asteron Life is now Suncorp Life and Superannuation Limited?---Yes.

And Asteron Portfolio Services Limited is now Suncorp Portfolio Services Limited?---Yes.

And the way in which this policy and, we understand, all of the relevant policies work is that the assets of the relevant division of the Suncorp Master Trust are invested pursuant to these policies with Suncorp Life and Superannuation Limited?---Yes.

And then, in turn, they are invested in I think the No. 4 Statutory Fund, or at least in this case it's the No. 4 Statutory Fund?---Yes.

And if we go to page .0082. So this is the part of the policy dealing with investment benefit?---Yes.

Is this the part that sets out the administration services?---In part, yes.

5

Are there other parts of the policy that set out the administration services?---Yes.

Are you able to tell us in this part where the administration services are set out?

10 MR KIRK: Commissioner, one page is up on screen. The witness has been asked about what he knows about different parts of the document. It would be fairer, in my respectful submission, if he was provided with a hard copy of the document.

MR HODGE: I'm quite happy for that, Commissioner.

15

THE COMMISSIONER: Do you have a hardcopy, Mr Kirk?

MR KIRK: I don't.

20 MR HODGE: We will get a copy produced, Commissioner.

Let me – while that's coming to you, Mr Pinto, let me understand the position. The policy sets out, as you recall it, certain administration services?---Yes.

25 And does it set out how Suncorp Life and Superannuation Limited is to be paid for those services?

MR KIRK: Commissioner, again, the witness is being asked details of the document where he doesn't have the document, and nor, so far as I know, does he have the power to scroll through it on the screen.

30

MR HODGE: He can have my copy?---Yes.

Did you find the part you were looking for, Mr Pinto? Perhaps it can be taken in stages. Did you find the part which - - -?---Yes. So – so if I look at part 5, for example.

35

That's page .0081?---Yes. It details the administration of insurance claims.

40 Yes?---In addition to those which were disclosed earlier.

When you say “details the administration of insurance claims”, it's just setting out the requirements for payment of a claim, isn't it?---Yes, it does, but the way I interpret it is that it does provide – provide guidance on how that claim – claims will be administered.

45

Can we agree on this: it is not something that sets out or specifies services to be provided by Suncorp Life and Superannuation Limited to Suncorp Portfolio Services Limited?---Well, I think it does, in that it – it specifies how SLSL will consider a claim.

5

All right. On your view that it sets out services, does it provide for an amount to be paid for those services?---No.

10 Now, is there any other part of the policy that you want to point to as setting out the administration services to be provided by Suncorp Life and Superannuation Limited to Suncorp Portfolio Services Limited in respect of the three divisions?---This – this particular policy is in relation to a particular division, the Optimum division - - -

15 Yes?--- - - - Within the Suncorp Master Trust. But there are policies that are issued in respect of other divisions of the Suncorp Master Trust.

This, though, is one of the three divisions - - -?---Yes.

20 - - - that you are referring to. So for each division there is a policy. Yes?---There would be a number of policies that have been issued over time.

25 Are you saying this policy doesn't identify the services for the Optimum division, but you think there's some other policy that does identify the services?---No. This policy does.

This policy does identify the services?---Yes.

30 All right. So we looked at claims. That's in relation to insurance claims. Is there some other part of the policy that you want to point to as identifying the administration services provided by Suncorp Life and Superannuation Limited to Suncorp Portfolio Services Limited in respect of the Optimum division?---Yes. Part 6.

35 Okay. Can we go to page .0082. So this explains that the – how the benefits are to be invested and how contributions are to be handled?---Yes.

40 And it explains that contributions which are paid over to Suncorp Life and Superannuation Limited are going to be invested under – or in units that are issued out of the statutory fund number 4?---Yes.

And it provides that all the usual things will happen if you're issuing units for investment, which is you will sell them or enable the selling and buying of them, and you will value them?---Yes.

45 And if we go to page .0084, you see in 6.9 it provides that certain expenses and investment fees are deducted directly from the investment options?---Yes.

And it identifies the particular types of fees and expenses which are expenses incurred in:

5 *Acquiring, realising and valuing investments in the investment option, applicable federal and state taxes, duties and charges, the investment fees paid to the investment manager, any other costs incurred in obtaining investment advice.*

10 ?---Yes.

And it says:

15 *Costs directly associated with the preparation and issue of customer information brochures and associated documents for the plan and this policy may also be deducted from the investment options.*

?---Yes.

20 And the investment options are, as we understand it, the units in the investments made as part of Statutory Fund No. 4?---Yes.

25 Now, do you say that's the administration services that are provided by Suncorp Life and Superannuation Limited to Suncorp Portfolio Services Limited?---These are the services that are specified in this policy.

Yes?---Yes.

30 Do we agree that it doesn't provide for a payment by Suncorp Portfolio Services Limited to Suncorp Life and Superannuation Limited in exchange for administration services?---Look, I'm not sure, based on my review of this document.

I tender that document, Commissioner.

35 THE COMMISSIONER: Asteron Life Limited group insurance policy – have we a date, Mr Hodge?

MR HODGE: The policy start date is 11 December 2006, Commissioner.

40 THE COMMISSIONER: 11 December 2006, SUN.1505.0003.0066 is exhibit 5.167.

45 **EXHIBIT #5.167 ASTERON LIFE LIMITED GROUP INSURANCE POLICY, SUN.1505.0003.0066 DATED 11/12/2006**

MR HODGE: In any event, if we go back to SUN.1501.0005.5563 and go to page .5572. So the figures at the top of the page, where it's described as administration fees paid by Suncorp Master Trust to Suncorp Life and Superannuation Limited – do you see those?---Yes.

5

As I understood your earlier evidence, those are the fees paid pursuant to the policy we were just looking at?---Pursuant to the disclosure that's issued to members.

Now, I just want to be careful about this. Suncorp Portfolio Services Limited, when it issues a PDS, will tell members that it's going to charge an administration fee?---Yes.

And is the point you're now making that it pays a proportion of that administration fee to Suncorp Life and Superannuation Limited?---No, I think what I'm saying is that the administration fee, fees relating to this policy, are paid directly out of the Suncorp Master Trust to SLSL.

Yes. Let's take it in stages. The members are told that there will be an administration fee charged?---Yes.

20

And that fee is paid out of the trust to Suncorp Life and Superannuation Limited?---Yes.

But Suncorp Life and Superannuation Limited is not the trustee of the trust?---No.

25

The trustee of the trust is Suncorp Portfolio Services Limited?---Yes.

Must be Suncorp Portfolio Services Limited that is taking the fee from the trust?---Look, I'm unsure of the – the exact mechanics of how it works.

30

In any event, part of the administration fee that is charged to members is paid to Suncorp Life and Superannuation Limited?---Yes.

And that part is the \$15.6 million in FY 2016?---Yes.

35

And that fee is paid to Suncorp Life and Superannuation Limited pursuant to what agreement?---The – the policy that has been issued by SLSL to SPSL.

So that must mean that the \$15.6 million is the fee for the services being provided pursuant to not just this policy, but all of the policies issued in respect of the three divisions?---Yes.

40

So it would be possible, do you agree, to report on what those services are and what the value of those services is?---Yes.

45

And it would be possible, you would think, for a trustee to be able to point to a clause of a contract which says, "This is how the amount of the fee will be

determined”?---Look, I think in this instance it’s the – the relevant – the relevant document that outlines the fee is the product disclosure statement that’s issued to members.

5 Now, listen to my question again, please. I will say it back to you. It would be possible, you would think, for a trustee to be able to point to a clause of a contract which says, “This is how the amount of the fee – the administration fee paid to Suncorp Life and Superannuation Limited will be determined”?---And I – and I think that’s – that’s in the product disclosure statement.

10 You’re saying it’s not for the trustee to say, “Do we have an agreement with Suncorp Life and Superannuation Limited to pay this fee to them and how is that fee calculated”?---I think – I think what I’m saying is that is one option, but in our – in our instance, the fee – the administration fee is – is disclosed in the product  
15 disclosure statements.

On your view, then, Suncorp Life and Superannuation Limited is providing administration services to the trust under two kinds of agreements. The first kind is the additional services deed, the second kind are these insurance policies?---Yes.

20 And they must be agreements for two different separate services or separate groups of services?---Yes.

And would you not expect – or do you not expect when a submission is made to the board for the board to be told how the services under one agreement map against the services provided under another agreement?---So I think the board is provided with detail regarding the – the services which are – the additional services which are provided, but also the – the services which are provided under the – under the policies.

30 Now, when you say information about the services provided under the policies, how is that information provided to the board?---Through the – through the annual submission.

35 This submission that we’re looking at?---Yes.

The submission for the payment of the tax surplus?---Yes.

40 Can we go to page .5570. So you see this is appendix 3. It’s setting out the additional services composition?---Yes.

Is this the most detail that the board receives about the services?---In relation to the additional services, yes.

45 You see the second sentence:

*It is noted there is some overlap with services provided in return for the administration fees, but that in total, the amount received by Suncorp Life and Superannuation Limited from the surplus and administration fees is less than the amount it has spent.*

5

?---Yes.

And you see in the third box for the schedule, 3-O, which is calculating the applicable unit price?---Yes.

10

And that seems to be the highest identified expense for the year, which is about \$2.7 million?---Yes.

And weren't you making the point before that calculating the applicable unit price is part of the services that is provided under the insurance policy?---Yes.

15

And so it would seem, on its face, like Suncorp Life and Superannuation Limited is recovering the cost of calculating the applicable unit price out of the units. That's how the investment policy says it works?---Yes.

20

And then Suncorp Life and Superannuation Limited is being paid a proportion of the administration fees that are charged to members?---Yes.

And then Suncorp Life and Superannuation Limited is receiving the tax surplus justified on the basis that it has incurred a cost of about \$2.7 million for calculating the applicable unit price?---Yes.

25

And do you, as the head of the Office of the Trustee, regard this as a satisfactory situation?---Look, I'm not close to how that particular figure was – was calculated, but the purpose of this schedule is really to provide the trustee with guidance that value has been delivered in the provision of the additional services. So it's not intended to encompass all expenses that have been incurred in the provision of the additional services.

30

Do you agree with me that one way that the trustee might satisfy itself in relation to administration expenses is to (a) have a contract with an entity which says, "You will provide these services to the trustee in exchange for a fee" and (b) "calculate whether the fee due under the contract is payable or not", and (c) disclose to the members fully what the administration expense is that is going to be charged to them in order to pay that fee"?---Yes, it – it certainly is a – a – a clear approach in terms of disclosing the administration arrangements.

35

40

And Suncorp doesn't do any of those things?---It – it hasn't done that to date, but I don't believe that that in any way indicates that members have not received value for the additional services that have been provided.

45

But there's no practical way for the trustee to know whether that is or is not the case, is there?---As part of this submission, the trustee receives detail regarding the additional services that have been provided in addition to this table.

5 THE COMMISSIONER: But on the face of it, the member is paying twice. Isn't that the position? The member is paying for the calculation of applicable unit price because the unit price is diminished. Is that right?---Look, I'm not sure exactly how that – how that has been calculated. It may well be that, you know, it relates to certain costs that haven't – that haven't been charged separately.

10 Well, Mr Pinto, the difficulty is if you're not certain of it, how can you be certain that the member is not paying twice?---Yes, I don't know.

MR HODGE: And I just need to make sure I've understood the answer you gave about detail. Can we go back a page to page .5565. So the board is told how the surplus emerges?---Yes.

20 And each year KPMG, or whoever the accountant is, checks the calculation of the surplus?---Yes.

And then if we go to page .5566, there's this explanation of the scope of how the values of the additional services are substantiated?---Yes.

25 And then if we go to 5567, this is where it's said there's member benefit and value from projects that have been implemented?---Yes.

And then if we go to 5568, this is where it's explaining further the implementation of these projects?---Yes.

30 And then if we go to 5569, this is where it sets out some further general explanations into the – in relation to the services, including that daily administration services are part of the scope of the additional services?---Yes.

35 And then if we go to 5570, this is the appendix we've already looked at. This is, I suggest, the only detail that is set out as to how the supposed value of the additional services has been arrived at?---Yes.

40 And then if we go to 5571, this is an explanation of the methodology by which a value has been attributed internally to those additional services?---Yes.

And then if we go to five – I'm sorry, just on that, and the way in which the value is attributed is by using Suncorp Group's expenses attribution rules?---Yes.

45 And then if we go to 5572, this is, again, the page we've already looked at, which is setting out what the amount of the fees are, and then an attempt to compare this practice with competitors' practices?---Yes.

5 And to understand the comparison with competitors' practices, if we just go over the next page to page .5573, what is done is to note where different entities are charging explicit levies for regulatory – I'm sorry – explicit levies to cover the cost or supposedly cover the cost of making changes to meet regulatory requirements or to build up their operational risk financial requirement reserve?---Yes.

10 And those comparisons, can I suggest, are quite different from what Suncorp is doing, which is retaining the tax surplus and paying it to a related group entity without disclosing to the members what the amount is or the percentage is?---Whilst the amount and percentage aren't disclosed, Suncorp does disclose to members that amounts that are held in the contributions tax surplus may be used to meet the fund's expenses.

15 I tender that document, Commissioner.

THE COMMISSIONER: Board submission 22 June '17, SUN.1501.0005.556 - - -

20 MR HODGE: Commissioner, I'm sorry, I'm told it has been exhibited already to Mr Pinto's statement.

THE COMMISSIONER: It's in.

MR HODGE: I apologise.

25 THE COMMISSIONER: Very well.

MR HODGE: Just so we understand what members are told, can we bring up SUN.1504.0001.3195.

30 THE COMMISSIONER: Can we have the number again, Mr Hodge.

MR HODGE: Yes it's SUN.1504.0001.3195. So this is Suncorp's Everyday Super product disclosure statement issued on 13 February 2018?---Yes.

35 And if we go to page .3205. We've just been trying to understand how the tax surplus point is disclosed. You see that there's a paragraph that's third from the top which is:

40 *All fees in this PDS are quoted on a gross of income tax basis and include GST and stamp duty (where applicable). The fees are also quoted less any available reduced input tax credits and are not reduced by any income tax that the trustee may be able to claim, or any income tax deduction available to the trustee through an interposed vehicle.*

45 ?---Yes.

We're not sure, so you tell me if we've misunderstood – is that how it's disclosed, or is it disclosed in some other way?---No, I believe it's disclosed in a separate – separate section.

5 Okay?---I believe it's in the product – product guide.

Oh, it's not in the product disclosure statement?---No.

10 Okay. But if you then – if a member – I'm sorry. I tender the product disclosure statement.

THE COMMISSIONER: Suncorp Everyday Super PDS 13 February '18, SUN.1504.0001.3195, exhibit 5.168.

15

**EXHIBIT #5.168 SUNCORP EVERYDAY SUPER PDS, SUN.1504.0001.3195 DATED 13/02/2018**

20 MR HODGE: If we bring up SUN.1504.0001.3211. You've got a copy of the document there, Mr Pinto. No, no, I mean you're looking at the document?---I'm looking at the Suncorp Brighter Super product guide.

25 Could I – I think you've got another one there. Just so we can follow it over, can you look at the Suncorp Everyday Super product guide. I think you should have that as well. You're not sure?---Which tab is it?

I will wait for your solicitors to tell you. But if we bring up on the screen SUN.1504.0001.3211. I think you've got – if you look at tab 24, you've got a product disclosure for a different product which is the Choice product, but I'm told they're in identical terms. And if you go to page 29 of your document. The pages are different. I will – we've got a spare copy – or my friend has a spare copy for you, Mr Pinto, of the Everyday Super reference guide. Hopefully that will come up on the screen shortly. And, Commissioner, Mr Kirk has kindly offered one to you.

35

THE COMMISSIONER: Thank you.

MR HODGE: So this is the Suncorp Everyday Super guide. It's – I think it's in total 59 pages long?---Yes.

40

And if you go to page 29 of that document. In the second column of text on that page, there's an underlined heading which is Expense Recovery and Reserves?---Yes.

45 And it says:

5                    *We can recover any expenses and costs incurred in the administration and management of the Suncorp Master Trust, of which Suncorp Everyday Super is part. The fund holds a general expense and tax reserve which may be used to meet the expenses associated with the administration, management and operation of the fund. Any excess amounts are retained within the reserve to meet future costs. No expenses or costs incurred are recovered from any investment in the Suncorp Lifestage Fund.*

10                    ?---Yes.

                      Is that intended to be disclosure of retaining the tax surplus and paying it over? There's something else maybe on page 31. I wonder if this is it. In the second column of text on page 31, there's a heading which is Tax and Government Charges, and then the third paragraph under that heading – there's this sentence:

15                    *We retain any excess amount deducted for contributions tax within the fund and may use this amount for authorised purposes, including to cover expenses we incur in the proper administration, management or maintenance of the fund.*

20                    ?---Yes.

                      Is that the disclosure that you were thinking of?---Yes.

25                    Do you think there's any sensible possibility that a member of the Suncorp superannuation fund would understand that Suncorp is paying the entirety of the tax surplus every year to Suncorp Life and Superannuation Limited in exchange for the additional services based on that disclosure?---Not based on that disclosure.

30                    Based on any disclosure?---Not that I can think of, no.

                      Do you agree with me – no, I withdraw that. I tender that document, Commissioner.

35                    THE COMMISSIONER: Suncorp Everyday Super product guide, SUN.1504.0001.3211, exhibit 1.569.

**EXHIBIT #5.169 SUNCORP EVERYDAY SUPER PRODUCT GUIDE,  
SUN.1504.0001.3211**

40                    MR HODGE: Now, if the amount being taken for the tax surplus would – was fully disclosed, the effect would be that Suncorp's administration fees would rise. Sorry, I should put that actually a different way. The effect would be that the disclosed administration fees would rise?---I think – I think it would depend on, obviously,  
45                    how the amount would be disclosed, whether it would be in the form of a single amount that is paid, or whether in some other form.

Do you agree that the administration fees charged by Suncorp are already, compared to its competitors, high?---I'm not sure.

5 Do you agree that they could not truthfully be described as low fees?---Again, I'm not responsible for the disclosure of our fees, so I'm not able to comment on that.

Suncorp's administration – Suncorp's fees for its super product had been described as low fees on its website?---Yes.

10 The Commission issued you with a Rubric to explain what the basis was for Suncorp's claim that the fees were low?---Yes.

Suncorp is now removing the claim that the fees are low from its website?---It has been removed, yes.

15 And that's because Suncorp recognises that its fees are not low?---No.

Why has it removed them?---So as to align the wording that is contained in the product disclosure statement with what's disclosed to members on the website.

20 And what is the relevant wording in the product disclosure statement?---That – that the fees are competitive.

25 And how has it been determined that the fees are competitive?---Look, again, I'm not responsible for the pricing of the product, so I'm not able to comment.

Are you responsible for, or do you have knowledge about the ADA transition plan implemented by Suncorp?---Yes.

30 As we understand it, there was one transition plan formulated in about 2013?---Yes.

And that plan was that the ADAs would all be transitioned in 2017?---By – by 2017, yes.

35 Now, just so I understand, you think the plan back in 2013 was that they would be transitioned by 2017, not in 2017?---Look, I wasn't responsible for the development of the plan and – and wasn't in the role of the OST at the time, so I would need to look at a copy to – to - - -

40 Let me put it in a different way. Has the transition plan ever been updated since 2013?---Not to my knowledge, no.

Your recollection is that what the transition plan provided for in 2013 was that Suncorp would ensure that it had transitioned the ADAs over to MySuper by 1 July 45 2017?---Again, I haven't - - -

I will show you. Can we bring up SUN.1501.0004.5485. So this is the MySuper transition plan?---Yes.

Have you reviewed it in the course of preparing to give evidence?---Yes.

5

And if we go to page .5487, we see:

10 *This transition plan has been put in place so that Suncorp Portfolio Services Limited can ensure that from 1 July 2017 all eligible beneficiaries in the funds for which it is trustee will have their accrued default amounts held in a MySuper compliant superannuation product.*

?---Yes.

15 And do you recall whether the plan otherwise sets out a process for how the transition will occur?---It would be helpful to have a copy of that document.

20 We will get a copy handed over to you. Perhaps even just focus on this question, Mr Pinto: does the transition plan set out when the transition will start?---It does talk to identifying all accrued default amounts. And – and then - - -

Which page are you looking at, Mr Pinto?---On page 3, under the Objectives.

25 That's page – this is the page we're looking at. Yes?---Yes. So – yes, talks to identifying the accrued default amounts.

Continuing:

30 *From time to time between 30 September 2013 and the earlier of 1 July 2017 and the date of transition of all accrued default amounts.*

?---Yes.

35 Does it set out a plan for when the transition will start?---On my review of the document, I can't see an actual start date.

All right. I tender that document, Commissioner.

40 THE COMMISSIONER: MySuper transition plan, SUN.1501.0004.5485, exhibit 5.170.

**EXHIBIT #5.170 MYSUPER TRANSITION PLAN, SUN.1501.0004.5485**

45

MR KIRK: Commissioner, I note that that version of the document has marking up suggesting it is not the final version of the document.

THE COMMISSIONER: Well, your document – your side’s document, Mr Kirk.  
You can perhaps sort that out.

MR KIRK: Yes, we will seek to do that – identify that in the course of the week.

5 THE COMMISSIONER: No, now.

MR KIRK: Well - - -

10 THE COMMISSIONER: Yes.

MR KIRK: I’m told, Commissioner, the final version is at SUN.1501.0004.0768.

MR HODGE: I’m content to sort that out later. Let me show you something else  
15 from your second statement, Mr Pinto. Can we bring up SUN.1508.0007.4238. Mr  
Pinto, do you agree one of the issues for Suncorp with the transition from ADAs to  
MySuper was that commissions are not paid on MySuper products?---No.

You don’t think that was a concern?---Certainly not – not to my knowledge, no.

20 You only joined the Office of the Trustee in 2016?---Yes.

But you’ve exhibited documents from 2013 to your statement?---Yes.

25 And you’re saying as far as you were aware, no one ever said to you that a concern  
for Suncorp was the effect that the transition to MySuper would have on  
commissions?---No.

If you go to – look at this email which is exhibited to your second statement, this is  
30 an email, you will see, from Mr Cogman. You’ve seen the unredacted email, so you  
know it goes to an adviser?---Yes.

And you see it’s sent on 29 October 2013?---Yes.

35 And you see there’s a heading in the middle which is Key Summary?---Yes.

And you see the second bullet point is:

40 *MySuper –*

I’m sorry. The first bullet point is to explain that for Choice members where they’ve  
made an investment decision:

45 *Grandfathered commissions will still be paid on insurance and funds under  
administration.*

?---Yes.

But the second bullet point explains that for:

*MySuper and accrued default account members, no insurance or funds under administration commissions are paid on the MySuper account.*

5

?---Yes.

But:

10 *ADA insurance and funds under administration commission is paid until 2017.*

?---Yes.

15 And do you agree with me that would suggest that as at October 2013, Suncorp was intending that it would not transition ADAs to MySuper until 2017?---No.

You don't agree?---No.

20 Why not?---On my interpretation of that – that sentence, it's simply providing factual information. I don't believe it's making, necessarily, a representation to the adviser that Suncorp will continue to pay commission up until 2017.

It's saying:

25 *Commissions will be paid on ADA insurance and funds under administration until 2017.*

?---Yes.

30 And that must mean that the ADAs will not change over to become – to go into the MySuper product until 2017?---No, I disagree. I – I think it's – it's simply indicating that there is a time period up until 2017 where any amounts that have not been transferred will continue to be paid commission.

35 I see what you're saying. You're saying it's not – it's not promising that ADAs won't be transferred until 2017; it's just saying if they haven't been transferred until 2017, grandfathered commission will still be paid on them?---Yes.

And, in fact, Suncorp didn't transition its ADAs until 2017?---No.

40

It did it in June of 2017?---Yes.

Was it 9 June 2017 that it commenced the transition?---Yes.

45 And finished at about 19 June?---Yes.

And you see further down on the page, Action Required:

*We recommend that you call or write to your key MySuper customers and encourage them to make an investment decision.*

?---Yes.

5

And as is apparent from what has been set out in the Key Summary, if an investment decision is made, then the member will go into a Choice product and continue to pay commission?---Yes.

10

The only purpose of this email which you have exhibited seems to be to encourage an adviser to take steps that will maintain grandfathered commission?---No, I disagree.

15

What do you think is the purpose of this email?---I think it's encouraging advisers to make contact with – with members so that they are actively engaged with their superannuation.

20

It's encouraging the adviser to obtain an investment decision?---I think it's – it's recommending that the adviser encourage the member to make an investment decision.

25

Yes. It's not recommending that the adviser compare whether the MySuper product is better for the member or the Choice product is better for the member?---Look, I'm not sure what – you know - - -

30

Well, we can see it's not doing that?---Yes, I'm not sure that – that it's not necessarily saying compare the MySuper offering against the Choice offering. It's simply saying we recommend you call or write to your – to your members and encourage them to make an investment decision.

35

Which will mean they will no longer be a MySuper member?---Well, that may be one possibility, but they may well decide to be a MySuper member.

40

All right. If we go to SUN.1508.0003.0934, one of the other services that Suncorp provided to its advisers was to give them a list of clients who are impacted by the MySuper changes?---Yes.

So that they would know which clients are going to transition from MySuper – I'm sorry – are going to transition into the MySuper product unless an investment decision is made?---Yes.

45

And do you say that wasn't done for the purpose of encouraging those advisers to cause their clients to make investment decisions so that the adviser could still be paid commission?

MR KIRK: I object. The question goes to the intent of the person sending - - -

MR HODGE: It's fine. I withdraw it. Can we go to SUN.1508.0007.5062. So this is another chain of emails that you've exhibited to your statement?---Yes.

It's a chain of emails between Mr Thiele of Suncorp and an adviser?---Yes.

5

And you see in the middle of the page the adviser emails Mr Thiele on 16 September and says:

10 *I understood from today's meeting that we will be getting a segmented list that highlights those who haven't made an investment determination and, as a result, need to yet opt out of MySuper.*

?---Yes.

15 And then you see that Mr Thiele's response at the top is to say he has obtained:

*... a data file that identifies which customers have processed an investment switch since March 2006.*

20 ?---Yes.

And then in the next paragraph:

25 *The 42 customers who have completed a switch are deemed to be outside the MySuper regime and, as such, their account will not change 1 January 2014. The remaining members are in the sights of MySuper.*

?---Yes.

30 And when you reviewed this email and exhibited it to your statement, did you think that this email suggests that Suncorp was encouraging advisers to cause their clients to make investment decisions rather than go into MySuper?---No.

35 What did you draw from this email about what Suncorp had been doing?---On my – my interpretation, the – the adviser is being provided with factual information regarding those customers who have completed a switch.

The people who are on these emails and doing this, sending them out – they're not part of the Office of the Trustee?---No.

40

They're part of some other part of Suncorp?---Yes.

What part of Suncorp are they from?---The intermediaries team.

45 Is that the intermediaries team that deals with advisers?---Yes.

So the intermediaries team is set up to assist the advisers?---Yes.

And build relationships with the advisers?---Yes.

And look after the interests of the advisers?---No.

5 Not to look after the interests of the advisers?---No.

Just to build relationships with them?---Yes.

10 And so the intermediaries team had obtained data from the trustee about investment decisions, or the absence of investment decisions, and was then using that to provide these lists to the advisers?---It was providing – providing lists to the advisers, yes.

In order to provide those lists, it would need data from the trustee?---Yes.

15 So the trustee must have provided the data?---Yes.

But the trustee presumably – you weren't there, but there's no reporting that you've seen back to the trustee explaining what's being done with that?---No.

20 You've been at the Office of the Trustee since the beginning of 2016?---From February of 2016, yes.

How many people are in the Office of the Trustee?---There are three.

25 And so one of them is you?---Yes.

And who are the other two people?---There are two trustee advisers.

And do they work solely for the Office of the Trustee?---Yes.

30 Do they report to you?---Yes.

I see. So it's you, and you have two people who assist you in order to advise the trustee?---Yes.

35 Commissioner, I don't have any further questions for Mr Pinto.

THE COMMISSIONER: Yes. Yes, Mr Kirk.

40 MR KIRK: No re-examination, Commissioner.

THE COMMISSIONER: Thank you. Thank you, Mr Pinto. You may step down.

45 <THE WITNESS WITHDREW [10.57 am]

MR KIRK: Commissioner, when I tendered the statements yesterday I forgot expressly to mention that I also sought to tender the exhibits to the statements. May we that as also tendered?

5 THE COMMISSIONER: Yes.

MR KIRK: May it please the Commission.

10 MR HODGE: And, Commissioner, I should just indicate something else which Mr Kirk and I discussed before Mr Pinto resumed this morning, which is there may be some documents that Suncorp would say they mean what they say; it's not necessary for Mr Pinto to look at them, and we've agreed that we will just review those and tender them at some stage.

15 THE COMMISSIONER: Yes. Yes. Mr Hodge, where to from here?

MR HODGE: Commissioner, Ms Dias is taking the next witness. Would you like to take - - -

20 THE COMMISSIONER: Well, we're changing - - -

MR HODGE: - - - a 10-minute break? We're changing counsel teams and - - -

25 THE COMMISSIONER: If I come back at five past 11.

MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Yes.

30

**ADJOURNED** [10.58 am]

35

**RESUMED** [11.06 am]

THE COMMISSIONER: Ms Dias.

40 MS DIAS: Commissioner, the next witness is Mr David Elia of Hostplus.

THE COMMISSIONER: Good morning.

45

**<DAVID ELIA, SWORN** [11.06 am]

**<EXAMINATION-IN-CHIEF BY MR DELANEY**

THE COMMISSIONER: Thank you very much. Do sit down. Yes, Mr Delaney.

MR DELANEY: Thank you, Mr Commissioner.

5 Mr Elia, is your full name David Elia?---Correct.

And is your business address 114 William Street, Melbourne, Victoria?---That is correct.

10 And are you the chief executive officer and also company secretary of Hostplus Proprietary Limited?---Yes, I am.

Have you received a summons to appear at this round of hearings of the Commission?---Yes, I have.

15

And do you have the original summons with you?---Yes, I do.

Could I tender the summons, please.

20 THE COMMISSIONER: Exhibit 5.171, the summons to Mr Elia.

**EXHIBIT #5.171 THE SUMMONS TO MR ELIA**

25

MR DELANEY: Thank you.

And Mr Elia, have you prepared a witness statement that responds to topics specified by the Commission in Rubric 5-53?---Yes, I have.

30

And do you have the original statement with you?---Yes, I do.

And are the contents of the statement true and correct to the best of your knowledge?---Yes, they are.

35

Could I tender the statement and the exhibits, Mr Commissioner.

THE COMMISSIONER: Exhibit 5.172, the witness statement and exhibits of Mr Elia in relation to Rubric 5-53.

40

**EXHIBIT #5.172 THE WITNESS STATEMENT AND EXHIBITS OF MR ELIA IN RELATION TO RUBRIC 5-53**

45

MR DELANEY: And can I just ask, Mr Elia, do you have an additional working copy of the witness statement and attachments with you?---Yes. Yes, I do. Thank you.

5 Thank you. Thank you, Mr Commissioner.

THE COMMISSIONER: Thank you. Ms Dias.

10 <CROSS-EXAMINATION BY MS DIAS [11.08 am]

MS DIAS: Mr Elia, you've been CEO of Hostplus since 2003; is that correct?---That is correct.

15

And before that, you were the executive officer?---I was the executive officer. That's correct.

20

In your statement, you refer to Hostplus' objectives to be the super fund of choice for people who live and love the hospitality, tourism, recreation, sport, and related industries; is that correct?---Yes. That's right. Hostplus is a sector-specific fund largely borne out of the hospitality and tourism industries.

25

And the trustee entity was originally established by the Australian Hotels Association and the United Voice Union; is that correct?---And – it's United Voice today, but they were called a different union at that time, miscellaneous hospitality liquor - - -

30

Liquor, Hospitality, and Miscellaneous Union?--- - - - yes, workers' union. That is correct.

Yes. And the fund has around 32 billion in funds under management; is that correct?---It's approximately 34 and a half billion.

35

34 and a half?---34 and a half as at July.

Thank you. And as at the end of May, Hostplus had about 1 million member accounts; is that correct?---We're actually at about – just over 1.1 million members. The fund has experienced extraordinary growth.

40

And you say members, do you mean member accounts or members? I understand there's a slight discrepancy between the two?---Yes, no. These are actually members.

45

Members?---So these are members, 1.1 million members.

Thank you. Now, that number – and I will refer to member accounts here?---Yes.

It did decrease slightly between 2013 to 2016, but then increased by about 35,700 between June 2016 and June 2017; is that correct?---That – that does sound approximately right, yes.

5 And this is in your statement at paragraph 14 if you wanted to - - -?---Yes.

Thank you. And the average member balance, Mr Elia, is that around \$24,000? Is that - - -?---It actually works out to just over \$30,000 - - -

10 Okay?--- - - - as at present day account balances. So we've got about \$34 billion in funds under management, about 1.1 million members, so it works out to just over 30,000.

15 And the industry mean is around 66,000. It's around half the industry average?---I haven't checked it, but I presume that that would be the correct.

20 Okay. And the returns on the products offered by the fund net of fees and taxes are consistently high compared to the rest of the industry; is that correct?---Well, we will go with consistently high. It has been one of the best performing funds for quite a long time. It does currently occupy first position over 1, 3, 5, 7, 15 and 20 years as the number one best performing fund, net of investment fees and tax.

25 And the MySuper product, is that what you're referring to there? That's the MySuper product?---That's the MySuper. That is the default product where the majority of our members currently reside. That's correct.

Thank you. I wanted to explore with you some of the features of the membership profile of Hostplus?---Yes.

30 As you said before, you explain in your statement that because the fund is for hospitality, tourism, recreation, and sport sectors, it has a large number of members that have only recently entered the workforce and are employed on a casual or part-time basis or who regularly change employment. Is that – that's correct?---Yes, that's – that's actually one of the features of the sector, and the fund has largely been, 35 to some degree, structured along those lines.

40 I see. And is it correct to say most members come into the fund because their employment contract or award has the fund as a default fund?---It is largely as a consequence of the default system that operates within the hospitality and tourism industry. That is correct.

45 I see. Or they're employed under an enterprise bargaining agreement that the fund is an option in that or the only option in that?---That is correct. There are quite numerous enterprise agreements. They would vary between union and non-union agreements, and that does actually provide significant coverage in the industry as well.

And you also point out in your statement that a large cohort have low account balances?---Yes, there would be a large cohort of members that do have small account balances. They're typically very young members, so at the early stage of the accumulation phase of their working life.

5

Okay. And that's really a symptom of the first feature we described, that the workers in this industry are coming in, they're new, they're working casually, and maybe they're young and in this sort of hospitality work?---Yes, typically part-time casual employees. If you can think about students working their way to, you know, subsidise their university life, typically that's – that's the type of age demographic that you would have.

Thank you. I just want to take you to a couple of pages in your statement. Your statement commences at WIT.0001.0095.0001. Thank you. Can we manage to put up on the screen 0006 and 0007. There are some tables there. So that's page 6 and 7 of your statement, Mr Elia, if you have that handy?---Yes. Yes, I do.

Thank you. So the first table on the first page, that shows the number of member accounts with balances of less than 6000 – or \$6000 or less; is that correct? That first - - -?---That's the first - - -

That's the first table?---That is – that's the first table. That's correct.

Okay. And so we see there that as at 30 June 2017, 469,659 member accounts had balances that were \$6000 or less?---That's correct.

And that figure – that represents around half of the total as at that time, roughly half?---At – at that time, yes, just under 50 per cent of the membership. That is correct.

30

Thank you, Mr Elia. And the second table on page 6, that shows the number of accounts that are deemed inactive?---Yes. So inactive as defined within the context of a member hasn't received a contribution over a 12-month period.

And we see there that 296,898 accounts are inactive. That's at the end of June last year?---So total – we're talking about total inactives?

Yes. Yes?---Total inactives. Can I just – sorry, that figure is from where? Where did you obtain that – that number? Can I just clarify that?

40

We're looking at the other – yes. That's right. That's over the page. But if we just start here, the number of member accounts deemed inactive within the fund are set out in the following table. Just at paragraph 20 there?---So – so paragraph 20.

Yes. What does that refer to there?---That refers to the total - - -

45

The total?--- - - - inactive. So every single member that hasn't received a contribution over a period of 12 months.

12 months?---So it's the totality of the membership there.

5

Yes. And is that also a symptom of what you were talking about before, about the demographic of the fund, that maybe because these members are likely to change jobs regularly, they leave, and are no longer contributing with that original employer that commenced the account with Hostplus?---It – it's largely typically individuals that have actually made the decision to leave their money with Hostplus. We are a public offer fund as well, which means quite a number of members would have joined by virtue of simply wanting to keep their money there. To take advantage of the investment performance of the fund or the insurance features of – of the fund.

10

15

But they're not contributing any more when they're in that cohort?---They haven't contributed. It doesn't mean this they won't contribute, but they haven't contributed over that 12-month period which is when we actually cut those figures – cut those numbers.

20

Okay. And if we go to that final table on that page, this is the total number of member accounts in the fund with balances under 6000. That's set out below. Is that – that's right?---That is correct, yes.

25

So we – and we see there at the very bottom as at 30 June 2017, the total that were under 6000 were 469,659?---That is correct.

So that's about half of - - -?---It's, yes, just under half.

30

At that time?---Yes, just under half. That's correct.

And over the page, there's the table at paragraph 23. Actually, I will go to 24. That's the number of inactive accounts that we talked about before with the balances under 6000?---Yes, that – that's correct.

35

And so we see there at the bottom corner, 161,037 have that total under 6000?---That is correct.

And they're inactive?---They haven't received a contribution over a period of 12 months.

40

For 12 months?---You can talk about engagement, but they're inactive by virtue of having not received a contribution over that period of time.

45

Yes. And so is that roughly around one-sixth of the accounts as at that time, 14 - - -?---As – as at – yes. As at that time, it would represent that, yes.

And the figure at the top of that column, the 33,467 accounts with the \$350 or less  
- - -?---Yes.

5 - - - now, what happens with those? Are they rolled over into the ATO at some point  
or - - -?---So, okay, ATO – ATO transfers and guidelines. There is a – a different  
criteria that is applied with respect to transfers to the ATO, and, from memory, the  
guidelines state that firstly the member needed to be a member of the fund for at least  
two years and not received a contribution for five years, so not have received a  
10 contribution for five years. So it's – it's a different criteria that would apply with  
respect to those members that would be identified as eligible to be rolled over to the  
ATO, or to an eligible rollover fund such as the AUS fund.

So a cohort of this figure may end up eligible to be rolled over into the ATO?---If  
they do meet that – that - - -

15 That criteria?--- - - - specific criteria, that could be the case, yes.

Yes. Okay. So just to sum up what we've been through, it's fair to say there's a  
20 large cohort of the fund or the members of the fund that have inactive accounts with  
small balances?---Yes. Inactive accounts are measured over a 12-month period.

Yes?---Yes.

25 And that demographic is different from other funds, is it, Mr Elia?---There's  
probably only one other fund that would probably have a similar demographic, and  
that would probably be Rest, which is a retail employees super fund. Again,  
typically very young people entering the workforce very, very early on in their  
career. So that's probably the best comparison that I can think of.

30 And the members that have the inactive accounts are – is it fair to say they're less  
likely to be engaged with their super? Do you find that?---Well, if they're – if  
they're typical – if they're typical of my children, who are also engaged in the  
hospitality tourism industry, I think the answer to that is yes.

35 And they may have even moved on to another employer who started another account  
on their behalf, and they're contributing to that because they've changed jobs. That's  
- - -?---Yes, so the – yes, so the issue of multiple accounts, certainly, in our industry  
– and I'm happy to talk a little bit more about that later, if you like – but multiple  
40 accounts is certainly a key feature of the industry, certainly for young members, and  
to that extent, certainly, the Hostplus trustee undertakes a number of programs in  
order to try and unify any multiple accounts that may be identified within the fund.

Now, it's a concern for Hostplus that it wants to attract and retain those members for  
45 scale reasons. Is that – that's correct?---So scale is a very important part of the  
feature of, I think, any fund. As you know, scale benefits ultimately feed through in  
terms of lower fees to the members and better investment outcomes by virtue of the  
funds under management that may actually attract.

And if we turn to page 4 of your statement. I think that's 0004. You've set out how the numbers have tracked from 2013 to 2017, and we see that the number of accounts has largely remained sort of oscillated around that 1 million mark; is that correct?---It has. There are a number of features there in terms of transfers that  
5 actually did take place, and I think we've – I've included a statement with regard to that. ATO transfers, transfers to the – to the AUS fund or loss of members in general to other funds, rollovers out.

But it has largely stayed the same over that period of time?---Yes, there's a variant of  
10 about 30 – 20 to 30-odd thousand, but it has largely remained relatively steady.

And the funds under management or the value of assets in that table has almost doubled. Now, that – one thing is that that's largely due more recently to the Scott PAIP effect. Can you explain to the Commissioner what that is?---We can't give  
15 Scott all the benefit, so one of the things that – that I have done is over the course of the last two years – so I've gone back to track the growth of the fund from 1 July 2016, so I've looked at '16 through to '17, '17 through to '18. The fund has actually grown by \$14 billion. \$14 billion over the course of the last two years. The Scott PAIP effect, if we want to call it that, insofar as, from memory, I think Scott's book  
20 recommends our indexed balanced option. So that is not the default option. That accounts for about \$2.5 billion. So if you – if you take out the Scott PAIP effect in terms of funds under management, there's about 11 and a half billion dollars of growth that's largely attributable to – well, it's attributable to a number of things, investment performance. Hostplus, for the year ending 30 June 2017, delivered a rate of return – I think it was – we were the best performing fund of 13.2 per cent.  
25 And then again, 30 June this year, 30 June 2018, again, number 1 best performing fund of 12 and a half per cent. In addition to that, you've had an increase – slight increase in the SG. You've also had extraordinary growth within the hospitality and tourism sector. The sector itself is one of the fastest growing sectors in the industry.  
30 We've seen the rise and growth of Chinese tourism. I think we're now in excess of a million tourists that directly come from – from China. We've seen a growth of tourism within – within India. So our industry, which is the hospitality and tourism industry has actually grown. And as a consequence of that, we've seen an unprecedented number of hotels being built, restaurants, the entire industry has  
35 actually exhibited an enormous amount of growth. I think, from memory, the industry has grown by about 2 per cent, and it now accounts for – the total hospitality tourism ABS numbers are somewhere in the vicinity of 680 to 700,000 employees. So by virtue of a lot of the retention programs, you know, we do spend enormous amount of time and effort in terms of retaining the default superannuation  
40 arrangements that we have with our key employers or employers in general, the growth of the industry, the performance of the fund, they've all been positive contributors to the overall growth of the fund.

So the growth of the fund – or one of the points, picking up from what you've just  
45 said there is growth is largely driven by the existing employers, the organic growth of those employers?---It is. It is largely driven by that, and, again, as I've highlighted, if we strip out the Scott PAIP effect which, again, is largely reflected

growth in the indexed balance option, there has been phenomenal growth within our industry. Clearly we are a national fund. We're a scheme that caters for the entire hospitality and tourism industry across Australia.

5 And conversely, less members have maybe joined, or less of the new members have joined from new business wins?---From new business wins?

10 New business wins, yes?---No. We've -- well, we've had -- I mean, a significant part of our growth does emanate from existing employers or the existing membership. A great example would be -- I mean Crown casino. I mean they continue to grow. As they build another hotel, the fund will effectively leverage off that growth. We've seen new market entrants come into Australia, particularly some of the hotel brands, some new hotel brands, and that -- that seems to be an ongoing trend and one that will certainly continue, and we're certainly keeping track of -- of the growth within  
15 the hospitality, tourism sector, particularly within the accommodation divisions that represent a large portion of our membership.

20 So just to confirm, you've said that a lot of the growth is coming from existing employers, and you mentioned Crown?---Yes.

25 Yes?---I mean, that's one example. We had -- we had approximately 200,000 new members join the fund over the course of the financial year ending 30 June 2018. For the financial year ending 30 June 2017, we had approximately 180,000 new members. But we have lost -- we then on average lose about 100,000 members, 80 to 100,000 members per year. So on balance, the growth of the fund has largely been net about 100,000, year on year.

30 Okay. Thank you. Now, I just want to explore the ways that Hostplus tries to retain and attract members. One of the things that Hostplus does is it does communicate with members to stop them having their balance rolled over into the ATO where they are a lost member. You're aware that there are regulations around this that require accounts with less than 6000, where the member is uncontactable and inactive, it's a lost account, to be paid to the ATO. You're aware of that?---Yes. So there are certain steps that the trustee -- I think the ATO best practice guidelines do clearly set out an obligation on the part of the trustee to do whatever they possibly can in order to engage and ensure that the member is given every opportunity to reactivate or at least be contactable insofar as the fund is concerned. So -- so there is -- there is a program of works which the trustee does undertake, because it fundamentally  
35 believes that members, to the extent that they are engaged, and can reactivate their accounts either with Hostplus or transfer that money to any of their active accounts, that it is in their best interest to certainly pursue that -- that type of activity.  
40

45 I will just take you to one of the communications, Mr Elia. It's HOS.0041.0001.0004. This is a letter to a member. It says:

*We are writing to advise that your account may soon be closed and your money transferred to the Australian Tax Office. Your account has been identified as at*

*risk of becoming inactive and under current legislation we are required to transfer inactive accounts to the ATO.*

And it goes on to say:

5

*Please note if your money is transferred to the ATO your super may not experience the same level of investment return as it would with Hostplus.*

And then it prompts that member to contact Hostplus?---Yes. Yes.

10

Now, this letter, do you agree that it could be misunderstood by the reader as suggesting, particularly for readers who have low financial literacy, that they're going to lose their super, it's going to be taken by the ATO?---I have to agree with you that having – having looked at some of these particular statements, there is no doubt in my mind that we could be a lot better at articulating, in essence, the message that – that we're seeking to make. So in some instances, the – the member may be better off staying with the fund, and this is on the basis that they do respond to the letter. I mean, by virtue of the nature of the membership, or the member that has been targeted, but I – I certainly, and I've already taken some learnings in relation to the messaging, but to the extent that the member then does respond and contacts the call centre, I know that there is a script that is specific to lost and inactive accounts, but there's a whole series of additional steps that the call centre would seek to undertake in relation to trying to engage the member in the first instance, trying to reunite the member through SuperCheck, which is the ATO effectively matching lost members, matching tool, so there's a whole series of steps that would be undertaken as part of that health check. And the other element to it is the question of insurance, and whether or not the member wishes to continue to avail themselves of the – of the insurance benefits that they may have. They may have as part of their account.

15

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25

30

I see. And there are – we do have a copy of the script, Mr Elia, but I can take you to it, one of the ones that Hostplus has produced?---Yes.

35

That's HOS.0041.0001.0015. Thank you. Is this the sort of script that you were referring to earlier when people ring up?---I have seen a much more detailed script, but to be – this is in relation to permanent exclusion.

40

Permanent exclusion?---Yes. And I am happy to comment a little bit more about the trustee's definition of permanent exclusion, because it doesn't mean that they're permanently excluded, but I am happy to come back and talk a little bit more about that. But I have seen a much broader script insofar as the call centre is concerned.

45

But this particular script, it has been produced, it has been used by Hostplus?---Yes. This is where – my understanding is that this is where the member does move towards permanent exclusion on the basis that they wish to retain their membership of Hostplus. There will always be a cohort of those members that have been contacted on the basis of being inactive, who choose to roll their money out. So to

the extent that a member chooses to – to be excluded, then that is the scripting that is – that is provided, yes.

I see. I will just take you to another document - - -?---Yes.

5

- - - that involves a communication about the ATO lost super. And that's HOS.0037.0001.1678. Now, this is a communication that ran as part of a campaign that Hostplus conducted called the "Tick the Box" office campaign. Do you recall that, Mr Elia?---So think that was a – yes, I do. That was a – that was a fund-wide campaign that was undertaken by the marketing team. Yes, I do recall that.

10

So this communication tells the member – it's a template - - -?---Yes.

15

- - - but it did go out to members. That's correct?---This went out – this went out to, my understanding is, the entire membership. There was a campaign that was – that was driven by the marketing team that went out to the bulk of the membership. It wasn't just limited to a cohort of inactive members.

20

But when you read this, Mr Elia, it's similar to the other one, but I will read the first sentence:

*We are writing to advise that under government regulation your Hostplus super account will soon be closed and the balance transferred to the ATO as inactive lost super.*

25

So it is directed to those accounts that are on the precipice of becoming closed, inactive?---Yes, yes. So they were part – part of the broad, I suppose, category of members, but the campaign was actually – was actually targeted at the entire membership.

30

And do you agree that this letter is also – could be understood by the average reader, particularly the young reader, as insinuating that they're going to lose their super to the ATO?---Yes. What I can tell you about the – the results of that campaign, if I may, if it pleases the Commission, there was about 18 and a half thousand members that responded to this particular campaign. So 18 and a half thousand members. Based on the information that I've been provided by – by my marketing team, 2000 of those members subsequently left the fund. As of today – as of today there's 16 and a half thousand of those members, of which 14 and a half thousand have account balances of in excess of \$6000, and about 2000 of those members – 2000 of those members, their account balances are less than 2000. I don't have a complete break-up of, you know, what the account balances are, but what I can tell you is about 180 of those members – about 180 of those members have had their account balances go down to zero. 180 since – since this campaign was enacted. So that's – that's the broad break-up.

45

So you're talking about the – or what your analysis is of what might have happened to these members that got this communication, but you don't deny that this particular

communication is potentially misleading, and it doesn't tell the member the information they need to make an appropriate decision around the opting out. Do you agree?---No, I don't think – I don't think it's misleading. I think it's sloppy, to a large degree. As I said, I mean, we – we should be getting much, much better at this and much more precise. I do – I mean, based on the – on the results of the campaign that I've just outlined, of which this was part of that campaign, I think, you know, from my perspective and certainly the learnings from the team, is that I think we need to be a lot more precise in relation to the way we articulate the messaging. One of the key features that the trustee genuinely believes in terms of the value-add is the insurance that's actually provided to – to members overall. And if I may just give you some examples of that. I did ask the Hostplus team to go back and analyse all the claims that were paid out, insurance claims, that were paid out over the course of the last 12 months. This is to 30 June 2018. There was 1,000 – just over 1400 insurance claims – 1400 insurance claims were paid out. Of those, approximately 158 – 158 of those insurance claims related to members with account balances of less than \$1000. Less than \$1000. And of those 158, 67 of those members that were paid out, by the time the claim was paid out, had an account balance of zero. The total value – the total value of those claims was just under \$15 million – \$15 million that was paid out to either the individual member or their beneficiaries. So I just wish to highlight that, because it is a – it is a balancing act for the trustee in order to balance out the overall benefits that a member continues to have by virtue of retaining their membership with Hostplus, and at the same time protecting the member's account balances by virtue of erosion of fees and taxes, and – and the other point, if I may just make, 20 per cent of the – of the members of Hostplus that are 20 years or under, have elected to opt out of any insurance coverage. So it's about 20 per cent is the figure that my team have provided me with.

THE COMMISSIONER: Can I ask you more generally, if we look at inactives, we look at small accounts, we look at multiple super accounts. That is, accounts with Hostplus and with others?---Yes.

Are you able to describe what you see as being the trustee's role, if you like, the trustee's duty, in respect of any or all of those groups, inactives, smalls, multiples?---Yes. I mean, the trustee, Commissioner, has a – has a duty to act in the best interest of – of all the members of – of the fund. We're a fund of 1.1 million members. So the challenge and the balancing act is to try and strike the right balance between looking at an individual's personal circumstances, and then setting up the structure of the fund, both in terms of its fees and charges, insofar as it relates to insurance, to strike that – that right balance. And I think that's the tension at the moment between the trustee's obligation and the legislation as it relates to lost and inactive accounts. I must confess, having, you know, read the – the criteria by which lost and inactive members are to be transferred to the ATO, my initial conclusion was that the ATO doesn't want these members. I mean, it's – it's a very, very high bar. The fund up until the introduction of MySuper where member protection rules applied, account balances of less than \$1000 were protected, and Hostplus – the trustee carried that cost. And from 2005/06, through to 30 June 2013, the cost over that period of time was in excess of \$100 million in member protection costs. So

from my perspective – and I know that the Minister has moved towards introducing fee caps with respect to small account balances, I think that’s absolutely appropriate, but we – we must remember, someone has to pay. And, ultimately, you have this notion of cross-subsidisation that will occur from – from bigger account balance holders or higher account balance holders. So I don’t have a – the right answer for you, but these are some of the tensions that not only Hostplus but certainly other industry players continually grapple with in terms of the design of the fund. So one of the things that we’ve sought to do, Commissioner, is (1) keep our fee at \$78 per year, which is \$1.50 per member per week. We do not have a percentage-based administration fee, and that’s a very, very important feature of the trustee’s desire to keep fees incredibly low. And, obviously the other key component is around the insurance design of the fund, and that’s something that the – that the trustee continually reviews on a regular basis, and I think we’ve provided some material that highlights that the premiums that are now being charged to the young membership have declined over a long period of time, and the trustee is in the process of taking some additional steps, but is waiting until the outcome of the Minister’s proposed legislation relating to insurance opt-out and opt-in.

MS DIAS: Mr Elia, you mentioned before that some research was done about the claims made. And you’ve been stressing the importance of the insurance. But you mentioned that approximately 158 claims related to the members with account balances of less than \$1000?---Yes. This is as at 30 June 2018. So I was – I was provided with that data by – by my team.

Now, I won’t take you back to it but your witness statement has a figure of the member accounts that have less than 1000. It’s over 55,000. So you’re saying that it’s in the best interests of these members that all these members have their balances eroded by insurance premiums so that the odd 100 or so can claim?---No, I’m not – I’m not saying that at all. Can I just see the figure that – the table that you are referring to, if I may?

Your table?---Yes.

In your statement it’s on page 7, Mr Elia?---Okay. I beg your pardon.

At paragraph 24. Yes, that’s right?---Yes. So – so I’m just using that to illustrate the point. The – the premium is – is age-based. So the premium that’s actually charged to members’ accounts is age-based. For example, if a member is 16 years or under, they’re only provided with a death-only cover. That’s 24 – I think it’s about 26 cents per – per week which works out to about \$12 per year for that death cover. Members, I think under the age of – from 17 to – sorry, from 19 to 16, I think from memory it’s about \$1 per week of unit cover which provides them with death and TPD. So it works out to about \$52 per year. So the trustee has worked incredibly hard to get that balance absolutely right between the provision of default cover for young members, understanding the impact – the potential impact of erosion of account balances. But at the same time, putting in place features that allow the members – allow the member to easily opt out – easily opt out to the extent that they

wish out of insurance. And the trustee this year – this is at 30 – this is at March this year – had also taken the additional step of looking to make insurance an opt-in feature for members under the age of 19. So - - -

5 THE COMMISSIONER: Under the age of?---19.

Thank you?---Under the age of 19. So it's – it's not a perfect science, but the trustee hasn't sat back and not looked at this particular issue on an ongoing basis, and I think what you will find is that over the course of the last six to seven years, the premiums  
10 that are charged to members have declined – have declined across the broader membership. We did have one particular spike in one year, but over time, the fund, certainly since 2015, significantly altered its insurance structure, benefit structure, benefit design structure, specifically to cater for young memberships. And the other  
15 point, if I may make, is this: premiums is – is only one factor that is a feature of any insurance that's provided to – to members. I often say that the devil is in the detail. At Hostplus, for example, and it's not something I generally publicly talk about, but Hostplus does not have a suicide exclusion in its policy. And given the nature of the young demographic of Hostplus, increases in youth suicide, mental health, that's something that the trustee does think about, and it is reflective of the underlying  
20 premium that is charged to – to members. We will pay out multiple insurance claims. If a member has claimed against another insurance policy, we will pay out the insured amount. We don't reduce the insured amount. So I appreciate the focus on – on cost, but I think it's also incredibly important to think through the specific insurance and design features underlying that actual premium. But Ms Dias, I  
25 absolutely understand where you're coming from in relation to, you know, striking that right balance between not eroding members' account balances, but doing everything we possibly can to engage the members, to – to the best of our abilities, to let them know that (1) they do have some element of insurance coverage. But I do want to stress the point that, you know, members have been able to benefit, albeit a  
30 small cohort. Insurance is a risk-related issue. You never know how many members are likely to make a claim, but I just want to make the point that members have certainly benefitted as a consequence of having insurance coverage.

35 MS DIAS: Commissioner, I might tender a few documents at that juncture, if that's a suitable moment. The template letter, HOS.0041.0001.0004.

THE COMMISSIONER: That's letter to lost members at February '15, exhibit 5.173.

40

**EXHIBIT #5.173 LETTER TO LOST MEMBERS AT FEBRUARY 2015  
(HOS.0041.0001.0004)**

45 MS DIAS: And the script, HOS.0041.0001.0015.

THE COMMISSIONER: Script for lost members exhibit 5.174.

**EXHIBIT #5.174 SCRIPT FOR LOST MEMBERS (HOS.0041.0001.0015)**

5 MS DIAS: And the “Hit the Box” office campaign letter.

THE COMMISSIONER: Inactive template letter cycle 1, 2016, exhibit 5.175.

**EXHIBIT #5.175 INACTIVE TEMPLATE LETTER CYCLE 1, 2016.**

10 MS DIAS: Thank you, Commissioner.

15 THE WITNESS: Commissioner, Ms Dias, may I make one final point, if I may, just in relation to round off this particular issue?

20 MS DIAS: Yes, Mr Elia?---I just want to talk about permanent – the notion of permanent exclusion. So from the trustee’s perspective, permanent exclusion does not mean that the trustee will not – does not have an obligation to go back and review any of the permanent exclusions that an individual member has actually made. In fact, the trustee has a program of works that it tends to undertake with respect to looking at every single member – every single member that has put a permanent exclusion on their – permanent exclusion flag on their account to ensure that it is in their best interests, and that’s something that the Hostplus board will be appraised of and updated of. Thank you.

30 THE COMMISSIONER: When was that decision made?---That’s as a consequence, Commissioner, of our learnings as part of this process, and the best – I think the best practice guide – the ATO’s best practice guide does talk about the trustee - - -

I’m not sure that’s telling me when. When was the decision made?---This was made as a consequence of what we’ve learned as part of – part of tendering the documents.

35 MS DIAS: So in the last week, Mr Elia?---No, basically in the last month or so.

I see?---Last month or so. It’s something that the executive team has – certainly the operations team have raised with me.

40 I see. Now, before, you were talking about insurance erosion of member balances. The premium – just to cut to the chase, the premium is a very important source of revenue for the fund. That’s correct?---For the fund?

45 Yes. In that the fund can claim deductions and use the surplus deductions – the surplus tax, sorry, and that is an important source of revenue for the fund. I might take you to a document but do you agree with that, firstly?---So the fund – so the tax deductibility of premiums – and this is something, I think, that’s been in existence since the fund was actually set up, is at a fund level as distinct to an individual level,

if – I believe that’s what you’re alluding to. That’s – that’s been a feature of the fund, I think, since it was set up. And the fundamental reason as to why that is the case is that because it is a group life policy, and the benefits of any – any premiums or benefits that arise by virtue of the risk profiling of the fund in terms of its negotiations with the insurers, deductibility is actually made at a fund – at a fund level.

Yes. I will just take you to a document, the first doc ID of which is HOS.0005.0003.7082. This is – this is a board pack or, sorry, a strategic plan from 2018. It’s very recent. The second page will show that, I think. If we can go to .7374.

THE COMMISSIONER: Sorry, what page, Ms Dias?

MS DIAS: Sorry, 7374, Commissioner. So that’s HOS.0005.0003.7374. It’s a very big extract. Mr Elia, I’m not sure if you have a copy there. But in short, it basically says that there will be an impact to the administration reserve if the code is - - -

THE COMMISSIONER: I think we better see the document, Ms Dias.

THE WITNESS: Can I – yes, when I - - -

MS DIAS: If I might take you to your CEO report from as recent as July, Mr Elia. Maybe we will do that. That’s HOS.0037.0001.0236. So that’s a very recent board meeting from July?---Sorry. Yes, the July - - -

That’s right. Can you see that?---Yes, 2018.

Yes?---Yes, I can.

Yes. And if we turn to 0706.

THE COMMISSIONER: Yes, it’s a 500-page board pack. It may be, but - - -

MS DIAS: It may be an extract. It may be 0706\_E, but the relevant paper is at 0706. It’s your paper, Mr Elia, to the board, from July, in which you talk about some – and you mentioned them before, these upcoming proposed reforms, one of which is the insurance?---Is it possible for me just to get maybe a hardcopy, please?

We will try and do that. Thank you?---Yes. Thank you.

That’s a prudent suggestion?---Yes. Hard copy will do.

I think a copy is going to be handed to you, Mr Elia. It’s quite small. That’s an old one. There you go.

THE COMMISSIONER: I would be glad if it could be brought up.

MS DIAS: We've got another copy, I think. I think we can give one to the Commissioner and one to Mr Elia.

THE COMMISSIONER: Well, can we get the document displayed.

5

MS DIAS: We're not sure, Commissioner. It's HOS.0037.0001.0706.

But it was only last month, Mr Elia, that you delivered this report. Do you remember speaking to the board about the insurance for superannuation?---May I have a  
10 hardcopy? Is that okay, or - - -

THE COMMISSIONER: Well, look, can we sort this out?

MS DIAS: Yes.

15

THE COMMISSIONER: Are we working off hardcopy or soft copy? Can we either have the soft copy up or can we have a hardcopy distributed? What's happening?

20 MS DIAS: We might stand down for one minute or two minutes Commissioner, to see if the soft copy can be brought up.

THE COMMISSIONER: I will come back at midday. Let's sort this out.

25 MS DIAS: We will.

**ADJOURNED**

**[11.56 am]**

30

**RESUMED**

**[12.04 pm]**

THE COMMISSIONER: Yes, Ms Dias.

35

MS DIAS: Thank you, Commissioner.

We hope – we think we have the document now. So it's the CEO board report. Mr Elia, you can see that's an extract from that report that you delivered to the board in  
40 July, and there's a heading there, Measure 3: Insurance For Superannuation Members. Can you just explain to the Commissioner what you're referring to here by measure 3?---Yes, so if – maybe if we just go back to the first – to the previous page, and if I could just provide, maybe, the Commission some - - -

45 We might be able to put them side by side, Mr Elia. 07 - - -?---Yes. Yes. Yes. Fantastic. Yes. So – so this was in response – as I – as I outline here, in fact, there's probably a – there's another comment that specifically references an APRA inquiry

that was made on the back of an article that was published by Aaron Patrick in the Australian Financial Review that talked to this notion of ghost accounts. And Hostplus, certain numbers were quoted in the article that were actually not correct. So I was approached by APRA, who, I think, from memory, were appearing before a  
5 Senate select inquiry, I think, the following day or the day before, and they thought that this issue might actually come up. And I was asked to just provide them with just an overview – brief overview of what the impact of the – the government’s proposed changes that relate to fee caps, insurance to be on an opt-in basis for members under the age of 25, or 25 and under. So what I’ve sought to do there,  
10 information that has been supplied by my finance team, we sought to try and provide a quick snapshot of what the impact would be on the fund if the totality of those measures were, in fact, legislated. That was – that was the essence of it. So, yes, very high level overview in that regard.

15 Thank you. So we see there that you’ve said you’ve written in this report:

*Approximately 670,739 Hostplus members will potentially have their insurance cover cancelled - - -*

20 ?---Yes.

Continuing:

25 *- - - as a result of falling into at least one of the following categories: members with low balances less than 6000, members under the age of 25 years, or members whose accounts have not received a contribution in 13 months.*

You go on to say:

30 *Together, it is estimated that this membership cohort pays default insurance premiums of 96.8 million per annum. This represents 43 per cent of the total insurance premiums paid to Metlife of 225 mill.*

35 Just pausing there, Metlife is the group insurer that - - -?---Yes, that is – that is correct.

That’s correct?---They’re our group life insurer, yes

40 And then you go on to say:

*The Hostplus administration reserve accrues a tax benefit on insurance premiums paid. The tax benefit received by the fund is equal to 15 per cent of the insurance premium paid.*

45 ?---Yes.

Continuing:

*If the proposed policy has the effect of reducing total premiums paid by 96.8 million per annum, then the Hostplus benefit will be reduced by 14.5 million per annum.*

5 And then you go on to discuss the Hostplus administration reserve has forecast to hold a healthy balance of approximately 172 million and the total impact on the funds:

10 *Administration reserve position on a do nothing scenario would see this reserve reduced to approximately 45 million.*

What do you mean by do nothing scenario there, Mr Elia?---So do nothing simply implied there has been a lot of articles written and, I think, a fair amount of research being done on the impact of any premium rises that may occur as a consequence of a diminishing pool. So do nothing, in essence, means, you know, lack of – you know, no re-engagement, activation, members choose not to opt in. It's not entirely clear how the proposed legislation would – would come into effect. One of the things that I think I've since learnt is that – I think the government's proposals, as I understand them, would only apply to new members as distinct to existing members. Now, I might be wrong, but I believe that that's where the proposed legislation is heading, in which case, the impact of the – the impact on the reserve, as outlined there, would actually not – not occur. So there's a whole series of things, inputs that we're not entirely clear about that would have some type of impact on – on the reserve, including any potential increases in insurance premiums that may occur. And some of the – some of the research that I've seen suggests that insurance premiums could rise by about 30 per cent for the existing insured members.

But what you've set out here shows that Hostplus is reliant on these cohorts with the low balances who are young and not likely to need the cover. They are essentially propping up the fund with their insurance premiums; is that correct?---No, I - - -

Do you agree with that?---No. No, I certainly wouldn't put it that way. This is a much broader cohort, so you do have members – and we don't philosophically agree, by the way, that members should be excluded. Certainly, members between the age of 25 and maybe up to age 20. I mean, it's generally where people are actually – you're moving into the workforce and actually do need insurance. So this is not a position that Hostplus, as the trustee, would certainly agree with, and I know quite a number of my industry counterparts would have a very, very similar view. There probably needs to be an age cut-off, and we think 19 is probably about – about right. But the fund certainly does derive a tax benefit, as is outlined here.

THE COMMISSIONER: You say moving into the workforce, need insurance. Insurance of what kind?---It's death and TPD. The fund does not offer income protection on an – on a default basis. It is on an opt-in basis.

Do you say that those moving into the workforce require both kinds of insurance?---The way that the fund is currently – the answer is no. We do have, as I

said earlier on, for some parts of the younger membership, death-only cover, and then as they get older – I think from age 17 onwards, it's death and TPD. It's still one unit of death, which is approximately \$26,000, and two units of TPD, which is about just over \$50,000.

5

What's the purpose of the Hostplus admin reserve?---The admin reserve, Commissioner, is – is the reserve that largely collects the \$1.50 per member per week charge, \$78 per week charge, and from which the operating costs of Hostplus are funded from.

10

From the reserve?---From – yes, from the reserve.

Yes?---Yes.

15

MS DIAS: Now, earlier in the year, Mr Elia, Hostplus – I should tender that document, Commissioner, the board extract.

THE COMMISSIONER: Extract from CEO report to board meeting of 27 July '18, HOS.0037.0001.0709 and 10, exhibit 5.176.

20

**EXHIBIT #5.176 EXTRACT FROM CEO REPORT TO BOARD MEETING DATED 27/07/2018 (HOS.0037.0001.0709)**

25

MS DIAS: Hostplus had its insurance arrangements reviewed by Rice Warner; is that correct?---Yes, we had – we had a review done the prior year in – in 2017.

30 And Rice Warner found that there was an issue with the premiums being less affordable for members on lower salaries. That's correct?---Yes. I think, from memory – if I can – I haven't read the report in its entirety, but I – I do believe that that was one of the things that they did pick up. The part – part of the review was to also move the fund towards its adherence to the insurance industry code which was a voluntary code that superannuation funds like Hostplus signed up for. One of the  
35 key aspects of the insurance code was to limit premiums to under 1 per cent – under 1 per cent of an individual's salary, and – and the review, to some degree, sought to factor that – that in as well.

40 And the code also has a provision about automatic insurance ceasing after 13 months – or 13 months after contributions cease where the balance is less than 6000?---Yes, the code – the code suggested 13. I think Hostplus took the view that – I can't recall if it was 16 or 18 months would be more reflective of the nature of, I suppose, the work patterns of our young members. If I was to cut the inactive account balances on the basis of an 18-month contribution, that 160,000 in membership would reduce  
45 by about 35 to 40,000 members just by virtue of shifting the contribution – inactive contribution definition from 12 months to 18 months. And, again, it just highlights, I suppose, the breaks in work patterns, the temporary nature of some of the work, the

seasonal nature of some of our employees. So it's about 30, 35, 40-odd thousand dollars – there are 35 to 40-odd thousand members, thereabouts.

5 But Rice Warner found that the number of claims for members under 25 is very low, and they're actually over-insured?---I can't recall if that was the – the conclusion that – that was reached. I would certainly need to – to have a look at the – the report. But either way, the decision that the board certainly took was to accept Rice Warner's recommendation insofar as making insurance for people from 19 and under on an opt-in basis.

10 I will just take you to a member statement, Mr Elia. That's HOS.0044.0001.0019. This member seems to have an inactive account, at least you can see there that for that half year, they haven't had any contributions paid in; is that correct?---Well, this – it's very, very difficult to – to make any assumptions about the nature of the member's desire to take advantage of insurance arrangements but have their  
15 superannuation may be held in a self-managed super fund or elsewhere. Can we - - -

That wasn't my question, Mr Elia?---Yes.

20 I just simply – reading the statement - - -?---Yes.

- - - there's no cash flows going in. Do you agree with that?---Yes, I can see that. That's – that's correct.

25 Yes. And the investment return is \$83?---Yes.

And the administration fees coming out are 39?---Yes.

30 And the insurance premiums coming out are \$565.59?---That's correct.

Yes. Now, they have a closing balance of 1216, and assuming that the following year, the same insurance premium is taken out, within a couple of years they will – well, every six months, actually. That's correct?---That's correct.

35 It will – they will be ending up with a zero balance. Do you agree?---Can I – can I see the actual insurance cover that this person actually has, please.

Well, I don't have the insurance cover?---I think it's very, very important.

40 It may be – it may be in the remainder of the statement. That can be handed to you if you want to peruse that?---Commissioner, if I may provide some context. This member is actually aged 33. It does appear to me that this member has actively sought to increase their insurance arrangements above the default, which is why I think if we turn to the actual insured amount, that may actually give us some – some  
45 more information.

Well, it's just an example, Mr Elia, of how the insurance premiums can erode balances, is what – is the point that I'm seeking to make?---So, again, if I look at the member's insured amount, it's eight units of cover, which seems to be above – above the default amount at that particular age demographic. It's not uncommon for – and we do see this, and this is symptomatic, I think, of a broader industry issue where certain members will specifically make a decision to take advantage of an industry fund's low cost insurance offering, and Hostplus is one of those, by deliberately parking a sufficient amount of money that would allow for the deductibility of the premiums. Now, what would be worthwhile is to see what subsequently happened to this member during the course of 2018, whether or not this particular member may have contributed more money. But I do accept, Ms Dias, your point, that if this member does nothing, does nothing, then, clearly, over time, their contribution – or their account balance will reduce. That's absolutely correct. Yes.

Now, just to finish off these insurance issues, why does Hostplus keep the tax benefit on the insurance premiums paid? You mention that that's something that some industry participants do, but others do not?---Yes. Yes.

Why does Hostplus do that and not return the benefit of that to members?---Yes, again, I mean, the fund was set up 30 years ago, so it was certainly before – before my time. That has been the underlying business rules of the fund, and my understanding is that it has a lot to do with the fact that the – that the overall – it is a group life policy. So it's not an individual policy, insurance policy. It is a group life policy which is a function of the demographics of the entirety of the fund, and the risk – risk profiling of the fund, and, therefore, it's the entire membership, to some degree, that contributes to the overall premium structure of – of the fund or premium design of the fund, and, therefore, the benefits of the premium's deductibility should be enjoyed by the entirety of – of the membership. And Hostplus is not uncommon – uncommon in terms of having that deductibility at a fund level.

And also, I just wanted to see if you're aware of the consideration that the board has given to the requirements in the Act, in the SIS Act, the Superannuation Industry Supervision Act, to only offer insurance of a particular kind where it won't inappropriately erode member balances. Have you considered that yourself? Do you know if the board has considered that?---I mean, the answer to that is yes, and the Rice Warner report – and Rice Warner have been engaged by Hostplus on – to conduct numerous reviews – that that review supports that – that particular obligation. So the board does give genuine regard to, you know, this notion of balancing out what is an appropriate level of cover for its members, understanding, also, the design features of – of the fund as it relates to the underlying detail of the insurance policy, such as no suicide exclusions or no exclusions in relation to multiple payments of benefits.

THE COMMISSIONER: Now, you describe the insurance as a low cost offering. Can you quantify that or give some numerical description of it?---I – I don't – the answer to that is – is, yes, it is low cost, relative to some of – other super funds, including other industry funds. I don't have that specific information at hand, but I

would be very, very happy to supply that. And that's – I think it's contained within the Rice Warner report, that does benchmark Hostplus's insurance premiums at particular age demographics for the - - -

5 MS DIAS: If it assists, Mr Elia, Mr Elmsley has sworn a statement that will be tendered in due course, but that has the average premium of being around \$200 per member per annum, but that's on average across the membership?---That is – yes, that's on average, and that would, presumably, also include any members who have taken out additional insurance above and beyond the default. But, Commissioner, it  
10 is a very, very competitive – in fact, it's probably one of the lowest cost insurance offerings, certainly for the younger demographics of – of the fund.

Now, was there anything further on that, Commissioner.

15 THE COMMISSIONER: No.

MS DIAS: As part of the Commissioner's terms of reference, Mr Elia, to consider whether the use of members' superannuation retirement savings is in the best interest of members, I wanted to ask you some questions about how the trustee uses  
20 members' money, and I will just recap on something you said before to confirm how the trustee meets the costs of administering the fund?---Yes.

There's a large administration reserve; Is that correct?---So the administration reserve, I think it's approximately \$170 million. That's correct.

25 And that's funded by the administrative fees that are debited from the members' accounts?---Yes, so Hostplus charges its members \$78 per year or \$1.50 per member per week, and that fee is then allocated to the admin reserve, and the admin reserve is then utilised to pay the – the administration operating costs of the fund. It would  
30 include marketing, would include administration, salaries, office overheads, other operating expenses.

And the trust deed governs how the trustee can charge for its fees and cover costs and disbursements; is that correct?---Yes.

35 Yes. And the trust deed provides that the trustee may engage in any marketing or promotional activity which it determines will promote the concept of superannuation and industry superannuation funds generally?---Yes, I think the trust deed talks about growth, growing the membership and also talks about defending the contribution  
40 base. That's correct.

But that power will be subject to the sole purpose test in the SIS Act, you're aware of that, and the obligation to act in the members' best interests?---Yes, that's correct.

45 Now, the budget for marketing. If we could just have a quick look at that. That's HOS.0014.0001.0257. And, Commissioner, I will tender that member statement that we looked at a little earlier. It's an opportune time.

THE COMMISSIONER: What was the date of the member statement, Ms Dias?

MS DIAS: 2015. HOS.004 - - -

5 THE COMMISSIONER: No, no, the date of the member statement.

MS DIAS: Sorry.

THE COMMISSIONER: It was, I thought, relatively current.

10

MS DIAS: Yes. 30 June 2017 – 2015.

THE COMMISSIONER: Member statement 30 June '17, HOS.0011.0001.0019, exhibit 5.177.

15

**EXHIBIT #5.177 MEMBER STATEMENT (HOS.0011.0001.0019) DATED 30/06/2017**

20

MS DIAS: Thank you. So just looking at that table, Mr Elia, we see that the marketing budget for the 2017/2018, that period there – or marketing expense – sorry?

25 THE COMMISSIONER: It's the years ended '17, are they?

MS DIAS: Years ended 2017 that's right. 21.44?---Yes.

Is that correct? And what expenses are included in that?---So there are, I think, two  
30 components in relation – sorry, three components in relation to that. The first  
component relates to the fund's branding, brand marketing strategy. The second  
component of that, that includes both sponsorship arrangements and, above the line,  
traditional forms of media, TV, print, radio. Second category would relate to what  
we call alliance industry partnerships, which would include partnership agreements,  
35 sponsorship agreements with various associations, including, in our case, the  
Australian Hotels Association, and United Voice, two of our sponsoring  
organisations. And the third component of that, again from memory, would relate to  
the ISA contribution that Hostplus makes with regard to the various campaigns that  
ISA runs. I think - - -

40

That's - - -?---I think that's right, off the top of my head.

Okay. And that has gone up quite significantly since 2013?---Yes. So when choice  
of fund was introduced in 2013 and MySuper was introduced, the trustee at – at that  
45 time, the strategy was to certainly ensure that we did everything we possibly can  
through our branding efforts to retain and grow the membership of the fund. And in  
so doing, you know, deliver the scale benefits that – that ultimately reflected through

low administration fees and improved investment performance. And as well, enhancements in terms of the service and product offering that we offer our members.

5 And where in this document, or at least maybe in that first page – we can probably put the next page up as well, that's 0258. Where is the accountability for the corporate hospitality expenses, all the entertainment expenses?---Yes.

10 Where is that found?---So – so there is a separate line item on page 1 in relation to entertainment expenses. I think you can see that at \$266,000. And within – within the marketing – within the sponsorship category there, there would also be some corporate hospitality built into that as well.

15 I see. In your statement you say that:

*Hostplus senior executives informally entertain current and prospective employers to grow and retain funds to the advantage of scale.*

20 You say that?---That is correct. I mean, the real – I mean, relationships are incredibly important, certainly in our industry. And the battle, if I can use that term, is all about retention of the default fund status, and retaining employers through relationship driven activities of which entertainment is a subset of what we do, is certainly absolutely important in terms of retaining the membership and also, in doing so, again, retaining those scale benefits that flow through to our members.

25 And the executives of Hostplus, including yourself, they have Amex cards that are authorised – or they had Amex cards that are authorised under the internal control environmental policy; is that correct?---So myself and the executive team, we have corporate cards. It was Amex. We've now moved to ME Bank diner's cards. I think it's the Citibank platform. And, yes, we do have – we do, and the chairman of  
30 Hostplus also has a credit card – a corporate card.

35 Thank you. And that policy that you do exhibit that to your statement, that provides for a monthly requisition which has to be completed by the accounts payable officer and then approved by the cardholder and yourself?---So in relation to all the other executives.

40 Others?---That's correct. In my case, the chairman of Hostplus signs off on my corporate – corporate credit card.

Now, Hostplus was the subject of a notice, like others, requiring production of certain credit card statements. I just want to ask you about some major transactions that – I won't bring up the statements, Mr Elia?---Please. Yes.

45 But you will recall these transactions?---Certainly.

In respect of the Australian Open, Hostplus doesn't sponsor the Australian open?---We are not a sponsor of the Australian Open, no. I think, from memory, MLC used to be a sponsor. I'm not certain if they're still a sponsor, and ANZ are a sponsor.

5

But Hostplus staff host employers and other stakeholders each year by taking them to the Open?---That is – that is correct. It's probably our flagship corporate entertainment event that we do. This year alone we invited approximately 120 employers, which accounted for about \$4 billion in funds under management, and about 160,000 members. So it is – it's a great time of the year for us to do that. It's a national event driven by the marketing and state – state offices. We have key employers, key stakeholders, alliance partners, flying in from all over Australia to participate in that.

10  
15 And how much was spent on those packages, Mr Elia?---I think – I think, from memory, the total cost is about 260,000, which – yes, about 260,000, I think, from – from memory.

20 And you attended this year?---I – yes, I did. I attended – I didn't attend as many sessions as I have in the past but yes, I do. It's a very, very important part, certainly from my perspective, and the senior executive team. We have senior leaders in the industry. It's a great time for us all to meet before the busy season all starts. It's a great way, certainly from my perspective and the executive team's perspective, to establish very, very early on and retain the relationships that are absolutely critical in terms of retaining the default fund status of our members and, therefore, retaining the members.

25  
30 The fund – you acknowledge at the start of your testimony – does very well in terms of its returns. Why do you think employers need to be entertained in this way, to choose or to retain their choice of Hostplus as the default status fund?---Yes. It is a competitive market out there. Our – our competitors are doing exactly the same thing. In fact, they are there. Whether it's the retail funds, whether it's, you know, a number of other industry funds, different organisations will do different things in order to hold on to those relationships. Relationships are really, really important in our sector. We have lost business. I'm happy to give you an example, you know, of a leading hotel chain, one of the largest in the world, by virtue of the fact that the CEO did not have a relationship, you know, with the key stakeholders there. So, you know, it's a competitive market out there. Relationships are important. We know our retail fund competitors leverage relationships, whether it's banking relationships. They will use corporate hospitality. Other industry fund competitors will – will do the like. We're not the only organisation that embarks on corporate hospitality, but it's a very, very important part of our retention program, and we do it for the sole purpose of retaining the membership of Hostplus. And we have been very, very successful in retaining those – those relationships by and large, and we see that through the growth of the fund. I think the only time I will ever know if – if it works or it doesn't, if – if you stop. If you stop marketing, you stop these types of corporate – corporate entertainment, but it is a – and every dollar counts. Can I just

5 make the point, every dollar count. \$250,000 in relation to the tennis, you know, that – we’re running a \$100 million budget, so that represents about 25 basis points of the total expenses. And I think if you were to do the sums, it would work out to less than one cent a week in terms of the admin – admin fee. So it’s a very, very important integral part of our retention strategy.

10 Mr Elia, does it concern you that you, CEO of Hostplus, a very successful fund, has to do this to retain members?---It does. And I wish I didn’t have to do it, but the reality is is that it is a competitive landscape that we’re dealing with. I would love nothing more than to have certainty about our – our member demographic and about employers staying with Hostplus, but I can give you plenty of examples where Hostplus, despite the fact that Hostplus is the best performing fund in Australia, despite the fact that Hostplus has the lowest fees, we have lost – we’ve lost employers, we’ve lost default fund status to other organisations by virtue of the relationships. The relationships – relationships are absolutely important in business. In my world, I see it all the time. Relationships are absolutely critical. And where you have – you may have one or two individuals ostensibly making default fund decisions on behalf of their entire workforce. Let me tell you, I don’t like it. I don’t like the fact that we lose default fund status or lose employers to other competitors, to poorer performing funds, high fee paying funds. It does not make any sense to me. So retention of defaults is absolutely critical. And unashamedly – unashamedly, we utilise, you know, entertainment, corporate hospitality, in order to strengthen the relationships we have with our employers. You need to do that. Remember, they all have got banking relationships as well. You know, they’re being pressured.

25 So in other words, everyone is doing it, so you have to do it too. Is that what you’re saying?---Look, as I said, I would prefer not – not to do it, but the reality is, in my world, in the competitive world that we’re actually operating in, it – it happens. And we’re not the only organisation that does it. But everyone understands the importance of relationship,. But Ms Dias, I want to make the point, I wish I could cut – and, in fact, we’re always looking at ways to try and reduce and cut our marketing costs. But under the threat of opening up of the default system and, you know, you’ve heard – you’ve heard some commentary made about that in terms of some of the proposals that have been bandied around, relationships are going to become incredibly important in terms of the retaining the default fund status of our members. And, ultimately, the relationships – and this is the business to business relationships – having strong relationships with the employers does give us access – and Hostplus largely operates a – a what I would call a wholesale distribution model. So we don’t have a retail-based model in terms – like our retail fund competitors. We don’t have an army of, you know, sales force. We don’t have financial planners that we largely rely on in order to bring in business, we don’t have big branches that we can leverage off. So relationships are absolutely important. Wholesale distribution is a hallmark of the industry fund system. And I know Hostplus is a bit of an outlier when it comes to some of our, you know, sister funds, some of the other industry funds, and maybe we are a reflection of the hospitality and tourism sector of which we are part of, but that is the core purpose and the sole purpose and it’s all driven by retention and delivering – and continuing to deliver great outcomes for our

members by virtue of the scale benefits that ultimately are delivered. And it works. By and large, it works. We have been able to retain a significant cohort of – of our membership, but at the same time we’ve lost – we’ve lost employers as well.

5 I will just go through a number of other transactions, Mr Elia?---Yes.

Let’s see if these ring a bell. So \$40,000 spent in respect of Etihad stadium last year in April. What was that in respect of?---So again – so the fund – they’re tickets, they’re Medallion Club tickets that again forms part of the entertainment expenses.  
10 There are two components to that. Again, one is client entertainment. So along the lines that I’ve just alluded to in terms of retention, retaining the employers, and the other one – the other component is that the tickets are used for reward and recognition within – within the Hostplus trustee office. It largely – and I will say largely – about 90 per cent – 98 per cent are directed towards our service centre. So  
15 Hostplus is a little bit unique in that we operate a call centre at Hostplus. And we run quite a number of reward and recognition programs. Call centres are notorious for high levels of – of turnover and I’m certainly happy to give you some more insight in terms of some of the great work that we’ve been doing around that.

20 Mr Elia, we saw at the start of your evidence that 161,000 accounts have less than \$6000 in them?---Yes.

Many of them are being eroded by premiums and fees down to zero. Do you consider it’s the best use of the trust money to purchase these sorts of corporate  
25 packages?---Yes. So - - -

Yes? Yes, answer, yes?---Sorry. I beg your pardon, sorry. So can I just make the point again, the cost – the cost of funding the entertainment expenditure comes out of the \$1.50 per member per week charge, the \$78. So we’re not dipping into  
30 investment reserves in order to – to fund the entertainment expenditure or the marketing expenditure. So I just want to make that one point. .

It’s coming out of the trust money?---It is. All the reserves are – all the reserves belong to the members. I just want to make that absolutely clear.  
35

Okay?---It’s – it’s not an insignificant sum of money. You’re 100 per cent right, it is a lot of money. But it’s done for the right purposes. It’s done for the purposes of, first and foremost, retaining the default – the default within the employers that we – we obviously target. It’s absolutely critical for us to do that in order to retain the  
40 membership and continue to deliver the scale benefits that we have been able to deliver to our members. If everyone stops, Ms Dias, I’m very – if we ban marketing, if people wish to do that, that’s perfectly fine by me, but the reality is in my world, my competitors are doing just that. I’m not suggesting it makes it right, but that’s, in essence, the nature of competition in the marketplace. And I have said it on a couple  
45 of occasions that we would love nothing more than to get some certainty. The importance of retaining these relationships with key employers, which goes to the heart of retaining their default fund arrangements, are absolutely in the best interest

of our members by virtue of the fact that we are delivering great returns, great returns for our members. And as I alluded to earlier on, we have a history of delivering outstanding investment returns, and that is in the members' best interest. And at the same time, doing everything we possibly can to keep our administration fee at \$1.50.  
5 And as I alluded to earlier on, that has not changed since 2004, including during a period where the fund was wearing the cost of member protection. So – so even under that particular period the fund was quite resilient.

And it hasn't got - - -  
10

THE COMMISSIONER: I think I understand the points you're making, but the premise for them is that performance is not enough to sell; is that right?---Commissioner – Commissioner, performance is not enough. There are so many irrational decisions that have been made. Hostplus loses approximately \$500 million a year in rollovers out to underperforming funds, high-cost funds. I sit there every day and just think, why does this happen? Hostplus loses default fund status, loses – and I'm sure we've provided – and you've probably seen some of the reports. In fact, the July board meeting had quite an extensive report about the losses that the fund has incurred over the course of the last 12 months. We regularly report this. If  
15 it was a rational market, I think Hostplus would be – should be 10 times the size of AMP. Should be 10 times the size of any of our competitor funds. It's just illogical to think how underperforming funds, high-cost funds, continue to grow at the expense of high performing funds. So there are other factors at play.

As I say, I think you have made that point more than once. The purpose of marketing, you say, is to retain default status. Is that right?---That is one component of it, yes. The other component is in relation to building our brand awareness. We're seeing a significant move towards individual choice of funds where brand recognition is also an incredibly important part of retaining our membership. Our public offer division has continued to grow, and by that I mean these are individuals that seek to join Hostplus in – presumably independent of, you know, any enterprise agreement or default fund status. And we're seeing – we're seeing, as account balances continue to grow, as members start becoming much more engaged – and we're seeing that – we're seeing that – individuals are certainly making choices.  
25 And the fact of the matter is brands are incredibly important. Our young membership is attracted to brands. My kids are attracted to brands. Brands play such an integral part in the decision-making processes. Forget underperformance at times, which probably explains why the retail funds and the AMPs of this world – they've had a 200-year head start to build their brands and build trust. That's what they've done. Hostplus has largely been embarking on a brand-building campaign since 2006 when the then Howard and Costello governments deregulated the superannuation industry. They opened up – they removed default funds as an allowable matter, and it opened up the marketplace for full-blown competition. Hostplus responded by starting to build its brands. And what happened during that  
35 40 45 particular period, was that, actually, industry funds grew.

MS DIAS: Mr Elia, you're aware that section 68A of the SIS Act prohibits a trustee of a superannuation fund or any of its associates offering goods or services to a person on the condition that the person's employees will become a member of the trustee's superannuation fund?---Yes.

5

Now, I'm not asking you to disclose any privileged communications or legal advice?---Yes.

10 Have you or the board considered that section in the context of these sorts of activities?---Well, we have, and it's – it's not done on a conditionality basis, so - - -

It's an inducement, but there's no condition. Is that what you're saying?---Look, I'm – I'm not a legal person. I'm not certain that's the word.

15 How would you characterise it?---That's not the word. It is one of numerous things that we do, numerous things that we do, information sessions, employer information sessions. We run a whole series of investment forums. It's about education. It is about engagement. It is not an inducement in any shape or form.

20 The entertainment packages that we've referred to – and I will turn to some other matters as well, but - - -?---Yes.

- - - when you're taking someone, for instance, to the Flower Drum, as you did in December last year, you attended - - -?---That was my staff.

25

It was your staff? You took your staff to the Flower Drum - - -?---Yes, and I'm happy - - -

30 - - - as a reward; is that correct?---So – so, Commissioner, if I may just provide some – some context to that. I'm the chief executive officer of Hostplus. One of my key roles and functions as a CEO, as a leader, the leader of an organisation, is to assemble a group of highly talented executives who are ultimately the driving room – they are – they are the engine room – engine room of Hostplus. When I think about someone like my chief investment officer, Sam Sicilia – now, Sam Sicilia has been  
35 with me now for about 10 years. I know Sam gets approached. Sam, to me, is one of the greatest chief investment officers not only in Australia, in the world. Now, Anne Silk spoke last week about the life-changing impact that funds like AustralianSuper and Hostplus and many other industry funds have in terms of our ability, sustained ability, to deliver extraordinary investment outcomes for our members. Sam Sicilia,  
40 to me, is at the epicentre to that. Sam can go off and set up his own boutique funds management business, and I know he has been approached, and he can make a hell of a lot more money – hell of a lot more money than what he is today. When I look at somebody like Alberto Mickey, my chief marketing officer - - -

45 THE COMMISSIONER: Let's not go through the entire staff, Mr Elia?---But – but - - -

THE COMMISSIONER: Let's get to the point. What's the point you're trying to make?---So the point – the point – the point is if I wish to do something special for them to make them feel special, to – to effectively retain their loyalty, you know, to the fund, then I fundamentally believe that our members are better for it. That was a  
5 very special night for them, their partners. These guys give me 60, 70 hours every week. They're constantly on call. They deliver great outcomes for my members. And from my perspective, if I – and I – look, to me, it's a fantastic investment in these extraordinary individuals, and they came back again, and we did it again. You know, we credited 12 and a half per cent to our members. You know, I sometimes  
10 think about it in the context of – if Sam Sicilia was – was to leave me, or any of my executives were to leave me, it would probably cost me 70 to 80,000 dollars to go and replace them, just in terms of recruitment costs. So these are judgment calls – these are judgment calls that I ultimately make about retaining my staff, and – I think it's a fantastic investment in – in the team. It's not something I do all – all the time.

15 MS DIAS: Mr Elia, APRA has expressed concern to Hostplus about your expenditure. That's correct; yes?---They've expressed concerns in relation to my expenditure.

20 Yes, due to an anonymous complaint about that?---So there was an – so there was a – a whistle blower – anonymous whistle blower complaint that was made – I think that it was initially made in August or September of last year, and subsequently, again, I think, January this year. That is correct.

25 And Hostplus engaged PWC to review your expenditure?---So my chairman and chairman of the audit risk and compliance committee did just that.

And the consideration given was whether any of those transactions breached the funds governance requirements and had supporting documentation and approval; is  
30 that correct?---Yes, that – that is correct.

And they were discrete transactions, not a complete review of everything?---It was – yes, it was largely focusing, I think, on the – on the tennis - - -

35 The tennis, yes?--- - - - and my travel expenditure.

Yes. And that review found that you do take your family to the tennis; is that correct?---So – so I have taken my – my family. We do – so when we invite our clients, we do invite their partners to come along. That's certainly not unusual, and  
40 we do, from time to time, also have cancellations, last minute cancellations. So, yes, I did, and I disclosed that in the – in the guest register.

And are the tickets reimbursed by your family?---Are the tickets - - -

45 Is the cost of the tickets reimbursed by you or your family?---The costs – the costs are already – it's a sunk cost. They're not individual tickets. So you buy a package for the entirety of the two weeks of the tennis. So can I – so just – if I can just clarify

the point. So my wife does come as – as a guest, as – as we invite other partners. So it's not just myself, but executive team or any other staff member from Hostplus. She is a Hostplus member, and so are my two children, but that's – let's park that. In relation to – to my children, they came by virtue of the fact – and it happens – it happens. We get last minute – we do get last minute cancellations. The – the time that they did appear – or they did attend, it was the Australia Day long weekend – Australia Day long weekend – where we had a number of cancellations that took place. But, as I said, yes, they did attend, and, yes, I declared that in the – in the guest register.

10 And the review also looked at frequent flyer points associated with the corporate card; is that correct?---Yes, that's correct.

15 Yes. And is it your account to which those points were being transferred at the time, the Amex card?---So – yes. So every cardholder accrues frequent flyer points on their cards, and those frequent flyer points accrue to the individual. In my case, I was – I was given my card by the then CEO in the year – the year 2000, so – so the then chief executive officer of Hostplus had given me my – my Amex, and the frequent flyer points have always accrued to me, and it has been one of my arrangements, have accrued to me, as they accrue to any other individual cardholder, and those points are – I mean, the individuals are free to utilise those cards – those points as – as they wish.

20 But you mentioned before that you've changed the card arrangements now. You're with ME bank?---Yes.

25 And that doesn't have the frequent flyer loyalty?---Yes. Yes, that's right. So as a – as a consequence of the, I suppose, the complaint that was made – or the whistle blower complaint that was made to APRA, the chairman of Hostplus and the chairman of the audit risk and compliance committee suggested to me that maybe this is something that we should probably stop. And – and I was – I agreed to that.

30 And you did that because you recognised it was not in the members' best interests that you secure that benefit at the fund's expense?---No, it was – it's an entitlement that – that I've had since two thousand – you know, since the year 2000. It's not a secret. I mean, the – my Amex is actually signed by my chairman and six previous chairmans as well. The points are clearly there. My head of finance, the accounts payable team are aware of that. I mean, even the whistle blower knew about it. So it's not – not a secret in any way. The points are there. You can see the points being transferred to my – it's a Qantas frequent flyer card. So the points had to be linked to the Qantas account. So as I said, this is an arrangement that had been in practice since – since the card was given to me.

35 But it has now ceased, Mr Elia. That's correct?---Yes, it's – it's – it is – it is now ceased. It is now ceased.

Thanks. Yes. I just want to tie some points together. So we know you've got a demographic – or the fund has a demographic that's 30 per cent inactive accounts. It's a largely disengaged group. Yes? That's correct? We've spoke about that at the start?---Well, yes, one of the things that we're – we're being – we're trying to understand is – and there is no - - -

THE COMMISSIONER: Well, I don't think you were asked that. Perhaps if you would ask the question again, Ms Dias, and if you would be good enough to answer the question?---Yes, because engagement and inactive is slightly two different things. You can be an inactive account balance holder, but still be engaged.

MS DIAS: Well, I will put them separately, then?---Yes. Sorry, yes. Yes.

30 per cent inactive accounts or roughly that; yes?---Yes, 30 per cent about, inactive accounts.

A disengaged cohort, young people disengaged?---Potentially, yes.

And over 160,000 accounts with a balance below 6000?---Yes.

The fund is reliant on their insurance premiums to provide tax deductions that go into the reserve?---The fund does – we're not reliant on it, but the fund does receive a tax deduction - - -

The fund - - -?--- - - - at a fund level. It's not entirely dependent on that. As I said, it does receive a tax deduction, but it's certainly not entirely reliant on it. And, again, can I just preface that the greatest example I can give you of that in relation to the resilience of the fund is during the period from 2005, 2006 through to 2013, when the fund had member protection costs, absorbed member protection cost, and continued to do that at the same administration fee level of \$78 per member per week – \$1.50 per member per week. So there's an enormous amount of resilience built within – built within the fund. The other point that I would make is that, well, you're looking at the revenue side of the equation. If we lose members, there is a consequential decline in the costs. The way we pay our administrator is also based on a per member fee. So – so there's a consequential offset that also would need to – to come into play.

Now, Mr Elia, you've suggested that you can't reduce your marketing expenses because you see it as a necessary means to an end to achieve scale. Now, has the fund given proper consideration to alternative means to secure that end, for instance, merger?---Hostplus – Hostplus has tried – Hostplus has looked at many merger opportunities, and, in fact, on a confidential basis, I can tell you that we are in discussions with a - - -

THE COMMISSIONER: Not too much confidential in this place, Mr - - -

MS DIAS: It's not going to be confidential, Mr Elia, I can assure you?---Yes. Yes. Yes. Well – well – we are, we're in discussions with – with a small fund in our sector. Hostplus has endeavoured over the years to – we've had numerous merger discussions, and they fail. They fail for various reasons. We're a sector-specific  
5 fund. There are about four or three funds in particular that similarly operate within our sector. And certainly from time to time with one of those funds, in particular, we've had on again and off again – in fact, I would argue I've had 20 years' worth of discussions with that fund.

10 Okay. No further questions, Commissioner.

THE COMMISSIONER: Yes. Mr Delaney, how long will you expect to be?

MR DELANEY: No re-examination.

15 THE COMMISSIONER: None?

MR DELANEY: No. No.

20 THE COMMISSIONER: That's a short answer then. Thank you, Mr Delaney. Mr Elia, thank you very much. You may step down?---Yes. Thank you.

You're excused?---Thank you.

25 **<THE WITNESS WITHDREW** **[12.59 pm]**

THE COMMISSIONER: If we resume at 2 pm.

30 **ADJOURNED** **[12.59 pm]**

35 **RESUMED** **[2.01 pm]**

THE COMMISSIONER: Yes, Mr Hodge.

40 MR HODGE: Commissioner, the next witness is Ms Elkins from Colonial.

THE COMMISSIONER: Yes. Ms Elkins, will you come into the witness box, please. I should have looked up to see whether you prefer to be sworn or affirmed, but what's the answer?

45 MS ELKINS: Sworn, please.

<EXAMINATION-IN-CHIEF BY MR FINCH

5

THE COMMISSIONER: Thank you very much. Do sit down. Yes, Mr Finch.

MR FINCH: Thank you, Commissioner.

10

Ms Elkins, could you give the Commission your full name, please?---Linda Maree Elkins.

And I think your business address is ground floor, 201 Sussex Street, Sydney?---Yes.

15

And I think you are here today in answer to a summons dated 30 July 2018?---Yes.

Do you have a copy of that summons there with you?---Yes.

20

I don't know whether, Commissioner, you have a convenient copy to hand. I tender the summons.

THE COMMISSIONER: Yes, exhibit 5.178 will be the summons to Ms Elkins.

25

**EXHIBIT #5.178 SUMMONS TO MS ELKINS DATED 30/07/2018**

30

MR FINCH: Thank you. I understand that you've made a number of statements in connection with your appearance?---Yes.

And one of them is one dated 26 July 2018, in connection with Rubric 5-17?---Yes.

35

Another is dated the same date, 26 July 2018, in connection with Rubric 5-18, in particular section (c) to (e)?---Yes.

Another is dated 30 July 2018 in connection with Rubric 5-37, sections (a) to (h) and questions 26 to 29?---Yes.

40

And the last is dated 7 August 2018 in connection with Rubric 5-78?---Yes.

And are the contents of those statements true and correct?---Yes.

45

I don't know whether it's convenient, Commissioner, for me to tender those sequentially.

THE COMMISSIONER: I think sequentially is better, Mr Finch. So if we say exhibit 5.179 is the statement of 26 July '18 concerning Rubric 5-17 and its exhibits.

5 **EXHIBIT #5.179 STATEMENT OF MS ELKINS RE RUBRIC 5-17 AND EXHIBITS DATED 26/07/2018**

10 THE COMMISSIONER: 5.180 the statement of 26 July '18 and its exhibits concerning 5-18 (c) to (e).

15 **EXHIBIT #2.180 STATEMENT OF MS ELKINS RE RUBRIC 5-18 (C) – (E) AND EXHIBITS DATED 26/07/2018**

THE COMMISSIONER: 5.181, the statement of 30 July '18 concerning 5-37, (a) to (h).

20 **EXHIBIT #5.181 STATEMENT OF MS ELKINS RE RUBRIC 5-37 (A) – (H) DATED 30/07/2018**

25 THE COMMISSIONER: And 5.182, the statement of 7 August '18 concerning Rubric 5-78.

30 **EXHIBIT #5.182 STATEMENT OF MS ELKINS RE RUBRIC 5-78 DATED 7/08/2018**

MR FINCH: Thank you, Commissioner. There's nothing further.

35 THE COMMISSIONER: Yes. Thank you. Yes, Mr Hodge.

**<CROSS-EXAMINATION BY MR HODGE [2.03 pm]**

40 MR HODGE: Thank you, Commissioner.

Ms Elkins, you are presently the executive general manager of the Colonial first state business?---Yes.

45 And you're also a director of Colonial First State Investments Limited?---Yes.

And you're also a director of, is it Avanteos or Avantos?---Yes, Avanteos, AIL.

Avanteos Investments Limited. And are each of those entities trustees of superannuation funds or is it only Colonial?---They're both trustees of super funds.

5

And I'm sorry, just because it's being recorded and also to help the Commissioner, you might just need to speak up - - -?---Speak up, yes. Sorry.

- - - a little bit, Ms Elkins. Now, what I wanted to start with was to deal with an issue that arose in 2014 in relation to the transition – or the requirement to pay new default contributions into a MySuper product?---Yes.

10

And you know, and were aware at the time, that under the amendments that had been made to the legislation to introduce MySuper, there was a requirement that all new default contributions be paid into a MySuper product?---Yes.

15

And it was a strict liability offence not to do so?---Yes.

Now, in the lead-up to 1 January 2014, APRA had written to all of the RSE licensees?---Yes.

20

And if we bring up [Crt: RCD.0025.0009.0004] , this is the letter, I think, we're both talking about, a letter of 15 November 2013?---I don't - - -

You're not sure whether this is the letter you're thinking of?---I'm not sure – I accept that that's a letter probably sent. I imagine that was sent to all trustees.

25

Yes. It's addressed to all registrable - - -?---Yes. Okay.

- - - superannuation entity licensees?---Yes, we would have received that.

30

I will just note a couple of things. You see in the third paragraph APRA says:

35

*RSE licensees are reminded that from 1 January 2014 default contributions can only be paid into an authorised MySuper product. And an RSE licensee commits an offence under the SIS Act if it does not comply with its obligation in relation to the treatment of default contributions.*

?---Yes.

40

And you see in the last paragraph:

45

*Those RSE licensees that presently receive default contributions but have no intention of obtaining authorisation to offer a MySuper product are expected to be well advanced in the implementation of appropriate administrative arrangements to ensure that default contributions are not accepted into the fund from 1 January 2014.*

?---Yes.

5 Now, Colonial First State FirstChoice Superannuation Trust had a MySuper product that was, in effect, from 1 January 2014?---In – in the employer sponsored division it did, but not in the personal division.

The superannuation fund itself had a MySuper product?---Not – we built a MySuper product at that time in the employer sponsored division of – of that trust.

10 And, again, just so we can be clear about the distinctions being drawn here, there is one trust, which is the fund?---Yes, and then there's products.

15 There are products or divisions within - - -?---That's right. So the employer sponsored division we built a MySuper product in that division. But there wasn't one in the personal – in the other divisions.

And a few months after – I'm sorry, Commissioner, I tender that document.

20 THE COMMISSIONER: Letter APRA to RSEs, 15 November '13, RCD.0025.0009.0004 exhibit 5.183.

**EXHIBIT #5.183 LETTER FROM APRA TO RSES (RCD.0025.0009.0004)  
DATED 15/11/2013**

25

MR HODGE: And then a few months after 1 January 2014, Colonial First State gave notice of a breach to APRA?---Yes.

30 And can we bring that up. That's [Crt: CBA.0001.0451.0190. This is a breach notice you've looked at before?---Yes, I believe so.

35 In preparation for giving evidence. Would it help, perhaps, if we go to the third page which is .0192. You see there's a description at the bottom of the page of the breach?---Yes.

And you see at the top of the page an identification of the legislative provisions that had been breached?---Yes.

40 And in this case, the breach was of 29WA?---Yes.

45 And the breach was that in respect of, at that time, approximately 13,000 members of FirstChoice Personal Super, they had made a default contribution into the fund since 1 January 2014 and it had not been paid into the MySuper product?---That's right.

And the way in which members became members of the FirstChoice Personal Super product was typically one of two ways, as I think is explained in the breach notice, either automatic transfer over from FirstChoice employer division?---Yes.

5 Or alternatively, if there was a successor fund transfer from some other fund  
- - -?---That's right.

- - - into this fund, then they would be moved into FirstChoice Personal Super?---That's right.

10

And in respect of, at that stage, what had been identified was 13,000 members, Colonial First State had no investment direction on file for them?---That's right.

15 And that meant that under legislation any contributions they made were default contributions?---That's right.

And the breach occurred immediately, so from 1 January 2014?---Yes.

20 Do you know why it was said that the trustee only became aware of the breach on 10 March 2014?---Because I – my understanding, or remembering back to that time, was that we hadn't properly identified this group of – of members as being part of our ADA cohort. So an error on our part in – in recognising them.

25 Was the issue that Colonial FirstChoice had – I'm sorry, Colonial First State  
- - -?---Yes.

30 - - - had suggested that the members had made a choice of fund and, therefore, that would constitute an investment direction?---For some of them, for those that had done that. So I think there was more than one thing at play. And, again, I'm going on my memory of the time. I haven't gone back and refreshed the reasons for the lack of identification of them. But we built a – the – the moving the members, the transferring them into the personal division, had ceased. That wasn't a practice we were doing any more and I think that contributed to not recognising them. When we did, we then saw within there, people who had then chosen that fund and we,  
35 therefore, did consider them to be choice members.

40 Do you know how it could be that a trustee as large and sophisticated as Colonial First State had not identified, before 1 January 2014, which members were choice members and which members were default members?---I think just the complexity at the time.

45 And what does that mean, exactly; the complexity at the time?---We were looking right across the business for, you know, identifying the – the groups that would be in the ADA groups, and – and this got – got missed.

I see. Now, again, just so I can try to put this in some further context – I tender that document, Commissioner.

THE COMMISSIONER: What's the date of the breach notice, Mr Hodge?

MR HODGE: Sorry. The date of the breach notice is 19 March 2014, Commissioner. If we bring up .0193.

5

THE COMMISSIONER: Breach notice Colonial First State investment to APRA 19 CBA.0001.0451.0190, exhibit 5.184.

10 **EXHIBIT #5.184 BREACH NOTICE COLONIAL FIRST STATE INVESTMENT TO APRA (CBA.0001.0451.0190) DATED 19/0382014**

MR HODGE: You may not recall this – and to assist you, I will bring up a document. If we bring up [Crt: CBA.0001.0451.0173. So this is a letter sent by Colonial First State. It's signed by Mr Sutherland?---Yes.

15

On 6 March 2014 to APRA. Does Mr Sutherland report to you or did he at the time?---No. No.

20

What part - - -?---No, he didn't.

- - - of the business is he in?---He was the wealth management risk officer. So I would refer to him as my line 2 risk person. So that's a person who adds challenge and review to my business but doesn't report to me.

25

I see. And you see Mr Sutherland refers to a meeting with an APRA liaison - - -?---Yes.

30

- - - on 21 February 2014?---Yes.

And you see he explains in the second paragraph:

35

*At that meeting you requested that we outline the circumstances relevant to –*

that's FirstChoice Personal Super –

*and the reasons why Colonial First State Investments Limited is unable to meet the requirements of section 29WA.*

40

?---Yes.

45

Again, you may just not be able to assist us, but you don't know why it is that it is said that the breach was first identified in March 2014, if, in fact, it was being discussed with APRA on 21 February 2014?---Yes, I'm not – I must admit, I'm not sure of the specifics of the sequence of events there.

I tender that document, Commissioner.

THE COMMISSIONER: Letter Colonial First State to APRA 6 March 14,  
CBA.0001.0451.0173, exhibit 5.185.

5

**EXHIBIT #5.185 LETTER, COLONIAL FIRST STATE TO APRA DATED  
06/03/2014 (CBA.0001.0451.0173)**

10

MR HODGE: And the position that Colonial First State took was that it was not possible for it to transfer or to move these default contributions into a MySuper product?---At that time, yes.

15

And do you know why it was not possible?---Because we didn't have a MySuper product in that fund that – that we could move them to. And I think then there was also a range of systems issues or systems that would need to be build – built in order to transfer them elsewhere.

20

Well, there was a MySuper product within the fund which was part of the employer division?---Yes, but you had to be employed by one of the employer groups to be in that fund.

25

Was that a requirement under the trust deed?---Yes. Yes.

I see. And so then, instead, you needed to look for a different MySuper product to move them to?---Another, yes. And go through the process of selecting that.

30

And what was the different MySuper product that you - - -?---Eventually, the – the MySuper product was Essential Super – Commonwealth Essential Super was selected.

THE COMMISSIONER: Sorry, Ms Elkins. You're dropping your voice?---Sorry.

35

Could you be good enough to keep it up?---Yes.

Thank you.

40

MR HODGE: Could you just explain to the Commissioner what Commonwealth Essential Super is?---So Commonwealth Essential Super is – we refer to it as a simple superannuation product, MySuper product, that is – was made available through Commonwealth Bank branches at the time.

45

And which fund was it part of?---It was a separate fund.

So there was a new fund that was established in order to house that product?---Yes.

And there was a distribution agreement in relation to that product?---With the retail bank, yes.

With CBA?---Yes.

5

And as part of that, there was a revenue sharing arrangement?---Yes.

We will come back to that. Just coming back to what has happened in March 2014, so at this time, the position of Colonial First State is we haven't complied with the law?---Yes.

10

And it was known that the law was coming into effect since 2012?---Yes.

And it was said we're not going to establish a MySuper product within the Colonial First State trust that is capable of receiving these default contributions?---Yes, that – that – yes.

15

And so the options that were given to APRA were either we will implement a block on the receipt of these contributions, or we will just have to keep receiving these contributions?---Until we do the transfer of the whole amounts.

20

That is, until you transfer the entire accrued default amounts - - -?---The entire, yes. Yes.

- - - to a MySuper product?---Yes.

25

And what MySuper product were you going to transfer them to?---At that time, the decision of which MySuper product hadn't been made, but it was then decided it was going to be Essential Super.

30

So the legislation had been in place since – I think it was 2012. Was that right?---Yes.

And it had been foreshadowed since 2011?---Yes, I think that's right.

35

And there were accrued default amounts that, one way or the other, were going to need to be moved into a MySuper product?---Yes.

And there was an obligation on the part of Colonial First State to move those accrued default amounts over as soon as it was practical to do so?---Yes.

40

But, in any event, no later than 1 July 2017?---Yes.

And I'm just trying to understand how Colonial could have thought that it was complying with its obligation to move the ADAs over as soon as possible if by 1 January 2014 it hadn't even figured out what MySuper product it was going to move them to?---Well, that's because it hadn't recognised that group.

45

I see. It didn't know that there were ADAs - - -?---Well, we hadn't - - -

- - - other than what was in the employer division?---Yes, I think that's right. I'm not sure, actually, the sequence of events there, but I think that's right.

5

Is a possible explanation for the approach of Colonial First State that it wished to maximise the period of time that the ADAs remained as ADAs?---No, I don't – that was never discussed.

10 The consequence of the ADAs being moved over to a MySuper product was that commissions would cease?---Yes.

And the ceasing of commissions to advisers was a matter of concern to Colonial First State?---It – it impacted advisers, yes, that worked with us.

15

It would reduce their revenue?---Yes.

20 And that was a factor that Colonial First State took into account in deciding when to transition ADAs over to the MySuper product?---I – we – we didn't ever discuss the commissions, but that is a consequence, yes.

I see. It was never something that was discussed; it was just a known consequence?---Yes.

25 Commissioner, have I tendered that document already? If not, I tender that document.

THE COMMISSIONER: It's in as exhibit 5.185.

30 MR HODGE: Thank you, Commissioner.

And if we then bring up CBA.0001.0451.0200. So this is a letter of 19 March 2014 to Ms McMahon of APRA?---Yes.

35 And I think if we go to page 2, we see you are the signatory - - -?---Yes. I am, yes.

- - - to that document?---Yes.

40 And if we go back to the first page, we see you are explaining that Colonial has considered a number of options to deal with the issue of these many offences, and the plan that it has come up with is to – and you describe it as:

*Commenced a proactive outbound calls via the call centre to contact affected members to obtain and record a valid investment direction.*

45

?---Yes.

And you express confidence on behalf of Colonial management that you will achieve a high member response rate?---Yes.

Subject to the plan being acceptable to APRA?---Yes.

5

I tender that document, Commissioner.

THE COMMISSIONER: Letter Colonial First State to APRA 19 March '14, CBA.0001.0451.0200, exhibit 5.186.

10

**EXHIBIT #5.186 LETTER, COLONIAL FIRST STATE TO APRA DATED 19/03/2014 (CBA.0001.0451.0200)**

15

MR HODGE: APRA sought a copy of the call script from you?---Yes.

Can we bring up CBA.0001.0451.0203. This is an email from Mr Sutherland copied to you back to APRA?---Yes.

20

You can see it's redacted, but I think you've looked at it before, and it goes to Katrina Ellis of APRA?---Yes.

And do you see it says:

25

*Please find attached the call-out script and proposed member communication.*

And then can we bring up CBA.0001.0451.0204. So this is one of the attachments which is the out-bound script for contribution directions?---Yes.

30

And it seems like the information in the box is the instructions to the call centre operator?---I think that probably is, yes.

And then below it is the script?---Yes.

35

And so the instructions given to the call centre operator begins with:

*From 1 January 2014, legislation changed regarding investment directions for contributions. We must have on record a direction from each member as to how they would like their contributions invested.*

40

?---Yes.

Is that statement true?---They're referring there to – in order for someone to be a choice – to be identified as a choice member.

45

Do you agree the statement as written is not true?---Standing on its own, you're right.

5 The – if we take the elements of it, the statement is saying that there was a legislation change regarding investment directions for contributions?---Yes.

That's somewhat accurate. There was new legislation that affected what happened if there was no investment direction?---Yes.

10 And then it says:

*We must have on record a direction from each member as to how they would like their contributions invested.*

15 ?---Yes.

That's not a requirement of legislation?---No, that's a requirement in order for them to be a choice.

20 It's only – that's right. It's only – the only requirement under the legislation is if there is no investment direction. Then new default contributions have to be paid into a MySuper product?---Yes.

25 And then you see in the script, after the general introductory words and the security check, that then what the call centre operator is instructed is to say:

*We have been receiving contributions into your account, and they are currently being invested into the –*

30 Whatever investment option it is?---Yes.

Are you able to pick that up in the middle of the page?---Yes.

And then the call centre operator is to tell the customer:

35

*There has been a recent change to legislation which requires us to confirm the investment options into which you would like your superannuation contributions paid.*

40 ?---Yes.

And that statement – do you regard that as true?---I can see now what you're saying, that it's – you – it's not.

45 Not true, because it says - - -?---It – it was – standalone, no, it's not. Correct. It's not correct.

But it achieves the purpose that Colonial was setting out to achieve?---Colonial was wanting to – Colonial had a view that these were choice – that these people had made a choice, and were seeking to get the investment confirmation from them.

5 Well, they had never made a choice as to investment options, had they?---Not to invest option, but to fund. That's right.

And when you say they made a choice as to fund - - -?---Yes.

10 - - - that's for some subcategory of the members - - -?---That's right.

- - - where the employer has taken up the employee's nomination as to what is going to be the default fund?---The other way around, where they have taken to their next employer this fund as their choice.

15 I see. They've taken – they've carried the fund over?---So when they've gone to their next employer, instead of accepting the default of that employer they've said, "No, I would like this fund."

20 Yes. Do we agree that in no sense is choosing a fund the same thing as making a choice of investment product to invest in some specific investment option rather than the default product?---I agree with that. At the time, that was the source of our contention, I guess, but yes, that – that is correct.

25 But the contention by this point is done. You have given a notification of breach to APRA?---Yes, but we were still of the view, as we expressed to APRA, that these people – we wanted to confirm whether these people wanted the investment selection.

30 I'm not sure I understand that. You wanted to confirm with APRA whether they wanted the investment selection?---We had confirmed with APRA that we would be calling these people to confirm the investment selection.

Yes. I understand you sent this script to APRA?---Yes. To APRA, yes.

35 And APRA didn't contact you and say, "This is obviously misleading, don't do it"?---Well, no.

40 And advantage to Colonial of using a script like this, is that if it leads the member to make the investment choice, then you don't have to pay new contributions into a MySuper product?---They can stay where they are.

That's right?---Yes.

45 They – and, again, just to be precise about this, in relation to new contributions, you don't have to pay them into the MySuper product?---That's right.

You cease to commit an offence?---Yes.

And is it because this script is misleading that Colonial was so confident that it would lead to members making an investment choice?---At the time we were  
5 confident that the members wanted to stay in the fund, or their actions represented that. I do accept that this script should have been more balanced in the way it described that.

When you say “more balanced”, do you mean not misleading?---I mean it should  
10 have described – it’s – it’s treating just the investment selection in isolation of the broader MySuper transfer.

Do you accept that - - -?---And it shouldn’t have done that.

15 Do you accept that it’s misleading?---Yes, I do.

I tender the email together with its attachment, Commissioner.

20 THE COMMISSIONER: Email CBA to APRA, 26 March ’14, CBA.0001.0451.0203, and attached call script CBA.0001.0451.0204, exhibit 5.187.

**EXHIBIT #5.187 EMAIL CBA TO APRA (CBA.0001.0451.020.) AND  
25 ATTACHED CALL SCRIPT (CBA.0001.0451.0204) DATED 26/03/2014**

MR HODGE: Now, if we then bring up [Crt: CBA.0001.0451.0208. This is an email from Mr Sutherland to you?---Yes.

30 And he’s describing to you a conversation that he has had with Katrina Ellis of APRA?---Yes.

And you see he says in the second point:

35 *APRA are conducting fairly extensive internal inquiries likely to be in regular contact in next 24-48 hours.*

?---Yes.

40 And then you see the fourth bullet point down:

*APRA currently going through the scripting letter.*

?---Yes.

45 And then you see the sixth bullet point down:

*Two key questions at this stage which we should proactively develop a response to: how has the trustee satisfied itself around not getting a written direction from the members contacted over the phone?*

5 ?---Yes.

And that was because what Colonial was proposing to do was to talk the members that it called through the form over the phone?---Yes.

10 And that the call centre operator would complete the form herself or himself?---Yes.

I tender that document, Commissioner.

15 THE COMMISSIONER: Email Sutherland to Elkins 26 March '14, CBA.0001.0451.0208, exhibit 5.188.

**EXHIBIT #5.188 EMAIL SUTHERLAND TO ELKINS (CBA.0001.0451.0208)  
DATED 26/03/2014**

20

MR HODGE: And then if we bring up [Crt: CBA.0001.0451.0217. This is an email from Mr Sutherland to Ms Ellis on 4 April 2014?---Yes.

25 You weren't copied to this email, though, I don't think?---No.

And you see he says:

30 *Please find attached and below final version of member communication letter that Colonial First State Investments Limited is mailing to affected members from next week and latest member call-out statistics.*

?---Yes.

35 And then if we then bring up, on the other side of the screen [Crt: CBA.0001.0451.0218. So this is the template communication that was going to go to members?---Yes.

And you see in the second paragraph it says:

40

*There has been a recent change to superannuation legislation which requires us to hold an investment direction from you in relation to future contributions paid into FirstChoice Personal Super.*

45 ?---Yes.

Now, do you agree that that statement is misleading?---That has the same problem as the script, yes.

And it then says:

5

*If a direction is not held by us, we are unable to accept contributions into your account.*

?---Yes.

10

And that's true only in one very limited respect?---Yes.

Which is you would have to put a block on receiving default contributions?---That's right.

15

Or at least that's what you were saying to APRA?---Yes.

Yes?---Sorry, yes.

20

And then the letter was going to say:

*For this reason, we would like to confirm the investment options into which you would like your contributions to be paid.*

25

?---Yes.

And then you see at the bottom of the page there is a heading which is, What Will Happen if You Do Not Reply?---Yes.

30

And it's explained that:

*If no direction is received by 10 May 2014 we will commence the process to transfer your account into a MySuper product.*

35

?---Yes.

Would that have been right, that if no direction had been received by 10 May 2014 you would have transferred it into a MySuper product?---I – I can't be sure how that date is relating to the actual process that was happening.

40

One respect in which I'm particularly trying to understand that is as you know, under the legislation and regulations, and I think prudential standard dealing with MySuper transition, it was necessary to give members 90 days' notice before transferring their ADAs over into the MySuper product?---Yes.

45

And it was also necessary to provide them with a certain amount of detailed information so that they would understand what was happening?---Yes.

And that would include information, for example, about changes to fees and things like that?---Yes.

5 There may have been an exception, which was if it was going to be beneficial to them, in any event to go over to the MySuper product, you may not have needed to provide fee information. I will have that checked, but I'm assuming?---I didn't.

You're not sure about that?---Yes, not sure.

10 But in any event, this letter isn't a letter that complies with those legislative requirements. Do you agree?---Yes.

And it's then said about the process to transfer your account – the member's account into a MySuper product:

15 *This may result in costs to you and the loss of any insurance cover you may currently have in FirstChoice Personal Super.*

?---Yes.

20 And can I suggest the obvious intent of that statement is to cause the member to be apprehensive about their account being moved over to the MySuper product?---We wanted them to turn their attention to the investment options and the insurance that they had.

25 Well, you didn't want them to understand it, in the sense that you weren't providing them with information so that they could compare what the fees would be, whether there was still trailing commission, what the insurance would be. You weren't providing them with any of that information?---You're right, but our concern was to ensure they turned their attention to it, but I do accept that we didn't provide them with sufficient information.

30 Well, the concern was to have them – and if we go over the page to page .0220 – the concern was just to get them to sign a simple contribution investment direction, that would mean that nothing changed?---That was the action if they wanted to stay.

35 But you weren't providing them with any information to enable them to make any informed judgment about whether they should stay?---I agree, we didn't provide them sufficient information. We should have.

40 The purpose of this letter was to assist Colonial to stop committing an offence?---That wasn't, you know, our focus. Yes, we – yes, we were focused, of course, on stopping the breach, but we had genuine concern for the – the – that these members would turn their mind to their investments and their insurance.

45 I don't – I just wonder, when you say that you had genuine concern about that, what the basis is for you saying that that was the reason that you did this?---Because we

could see that the investments they held and the insurance they held would be very different if they were transferred.

5 There was no analysis done of how this would affect the members, that is, changing from their current investment options over into the MySuper option?---The – the product managers had been doing that analysis, but I agree we didn't share that with the members and we should have.

10 This was, as we've seen from the documents, a mail-out and a letter that was the product of one thing, which was APRA saying, "You are committing an offence" and Colonial needing to stop committing offences?---Yes. Yes, you're right.

I tender the email and the attachment, Commissioner.

15 THE COMMISSIONER: Email Sutherland to APRA, is it, Mr Hodge, I think?

MR HODGE: Yes, Commissioner. That's correct.

20 THE COMMISSIONER: Email Sutherland to APRA 4 April '14, CBA.0001.0451.0217 and attached template letter to members, CBA.0001.0451.0218, exhibit 5.189.

25 **EXHIBIT #5.189 EMAIL SUTHERLAND TO APRA (CBA.0001.0451.0217) AND ATTACHED TEMPLATE LETTER TO MEMBERS (CBA.0001.0451.0218) DATED 4/04/2014**

30 MR HODGE: And then on 29 April 2014, APRA wrote back to you personally, and we will bring that up. That's [Crt: CBA.0001.0451.0241. You see this is the letter from APRA to you?---Yes.

And in the second paragraph you see:

35 *Attachment A summarises the aspects of your plan to deal with the breach.*

?---Yes.

Continuing:

40

*APRAs understanding is that under this plan rectification for all affected members will be complete by early September 2014 as members will either have given investment direction indicating they wish to stay in FirstChoice Personal Super or they will have been moved to a MySuper product.*

45

?---Yes.

Continuing:

*Subject to any matters that may arise from the information requests below, this plan is acceptable to APRA.*

5

?---Yes.

And if we just go over the page, over two pages to .0243, this is APRA's summary of the plan you've given them and the first dot point is:

10

*Contacting all affected members by phone or letter during March to July 2014 in order to obtain a valid investment direction.*

?---Yes.

15

And APRA knew, because you had provided it to them, what the contents of those communications were going to be?---Yes.

And APRA raised no issue with them?---Not that I'm aware of. They were obviously talking with Peter Sutherland as well but not to my knowledge.

20

Did it surprise you that APRA raised no issue about these communications?---No. Not at the time, no. You know, I think it was a time when a lot was going on, and when I look at the communications now myself, I can see their shortcomings. But that was not apparent to us at the time.

25

Did it surprise you that APRA took no steps with respect to the already admitted 13,000 offences that Colonial had acknowledged?---I thought APRA was acting appropriately to ensure that we were resolving the breach.

30

I think what – one of the things you're acknowledging is that in hindsight you can see that the communications are misleading?---They could have been better, yes.

I think you have – you're walking it back now, I think, to go back to the - - -?---No I am not trying to do that, Mr Hodge.

35

It's all right?---Yes.

Everybody does it. Everyone says they could have done something better rather than just saying, "We did something wrong". But - - -?---We did something wrong.

40

- - - you had – I know. You've acknowledged that you had done something wrong. When you think back on that and the misleading nature of the communications, it would seem that both you and APRA want you to obtain these investment directions so that you cease breaching the law?---I can't comment on what APRA was thinking. No, I didn't think that at the time.

45

I tender the document, Commissioner.

THE COMMISSIONER: Letter, APRA to Elkins 29 April '14,  
CBA.0001.0451.0241 exhibit 5.190.

5

**EXHIBIT #5.190 LETTER, APRA TO ELKINS DATED 29/04/2014  
(CBA.0001.0451.0241)**

10

MR HODGE: Now, then as things go along, you provide regular – or Colonial First State provides regular updates to APRA?---Yes.

15 And we might just show an example of this. If we go to CBA.0001.0451.0426. This is an email on 29 May 2014 from – sorry, 2015 from Mr Clemence - - -?---Yes.

- - - who is somebody employed with Colonial First State?---Yes, he would have reported to Peter Sutherland, I believe.

20 And we can see from the subject line this is the 13<sup>th</sup> update in relation to Colonial First State's contravention of section 29WA?---Yes.

And by this stage, you are dealing with the fifth tranche of members?---Yes.

25 And each tranche was a tranche comprised of members who had made default contributions within a particular period of time?---Yes, that's right.

And so the initial tranche were members who had made a default contribution between 1 January 2014 and 14 April 2014, or thereabouts?---I think that's – yes.

30

And then there was another tranche – we can see this on - - -?---Yes.

- - - page 2, .0427, tranche 2 members who made a default contribution between 15 April 2014 and 24 June 2014?---Yes.

35

Tranche 3, 25 June to 31 October?---Yes.

Tranche 4, 1 November to 30 April 2015. Can you see that at the bottom of the page?---Yes, sorry.

40

And tranche 5, 1 May – this is on the first page – 1 May and 31 October 2015?---Yes.

And then – I tender that document, Commissioner.

45

THE COMMISSIONER: Email 29 May '15, Clemence of Colonial First State to APRA re section 29WA update number 13, CBA.0001.0451.0426, exhibit 5.191.

**EXHIBIT #5.191 EMAIL, CLEMENCE OF COLONIAL FIRST STATE TO APRA, RE SECTION 29WA UPDATE NUMBER 13 DATED 29/05/2015 (CBA.0001.0451.0426)**

5

MR HODGE: And then if we go to CBA.0001.0451.0889. So this is now an email sent on 22 February 2016. Can you see that, Ms Elkins?---Yes.

And this is the 17<sup>th</sup> update in relation to the contravention of 29WA?---Yes.

10

And you're copied to that email?---Yes, I am.

And you can see there has then been a sixth tranche, and that has included members invested in a cash option?---Yes.

15

Can you recall what that was about?---I'm -- I don't recall - - -

Only what's written there?---I don't really remember, but that looks like, again, that there was an identification issue. They were - - -

20

An identification -- there were some new members that were found - - -?---Yes, there were some new that were found - - -

- - - that were ADAs?--- - - - that were part of this, yes.

25

And then we can see at the bottom of the page what's described as the final tranche, which were for member contributions occurring after 1 November 2015?---Yes.

I tender that document, Commissioner.

30

THE COMMISSIONER: Email, Colonial First State to APRA 22 February '16 concerning section 29WA update number 17, CBA.0001.0451.0889, exhibit 5.192.

35

**EXHIBIT #5.192 EMAIL, COLONIAL FIRST STATE TO APRA CONCERNING SECTION 29WA UPDATE NUMBER 17 DATED 22/02/2016 (CBA.0001.0451.0889)**

40

MR HODGE: And then in about mid-2016, do you recall that a new problem was identified, which was members with ADAs in FirstChoice Employer Superannuation?---Yes, I do.

45

I can maybe help you. Can we bring up CBA.0001.0451.1377?---Yes, but similarly, they -- there was -- yes, that's right.

THE COMMISSIONER: What were the last four digits?

MR HODGE: I'm sorry. It's .1377. So this is a letter on 8 July 2016 from Colonial – I'm assuming Mr Cornwell is a senior manager with APRA?---That's right.

5 Noting that Colonial had just discovered a subset of members in FirstChoice Employer Super who did not have their future investment weighting changed to MySuper 2013 and had not had their ADAs flagged correctly in the registry system?---Yes.

10 And then you needed to figure out how many offences had been committed in relation to those members?---Yes, that's right.

I tender that document, Commissioner.

15 THE COMMISSIONER: Letter, Colonial First State to APRA, 8 July 16 CBA.0001.0451.1377 exhibit 5.193.

20 **EXHIBIT #5.193 LETTER, COLONIAL FIRST STATE TO APRA DATED 08/07/2016 (CBA.0001.0451.1377)**

MR HODGE: And then if we then come to CBA.0001.0451.1855. So this is now the 19<sup>th</sup> update in relation to section 29WA?---Yes.

25 And by this stage, by 1 September 2016, the transfer – or the final transfer, at least for those 7000 ADAs and FirstChoice Employer is scheduled to be completed by May 2017?---That's the very last tranche, yes, that's right.

30 And I tender that document, Commissioner.

THE COMMISSIONER: Email, Colonial First State to APRA 1 September '16 concerning section 29WA update number 19, CBA.0001.0451.1855, exhibit 5.194.

35 **EXHIBIT #5.194 EMAIL, COLONIAL FIRST STATE TO APRA CONCERNING SECTION 29WA UPDATE NUMBER 19 DATED 01/09/2016 (CBA.0001.0451.1855)**

40 MR HODGE: And then the last update seems to be – if we bring up CBA.0001.0451.2600. So you see, this is a response from APRA to update number 24?---Yes.

45 And it – thanks to the correspondent for the email and providing the EY report?---Yes. That was the remediation, yes.

Yes. Ernst & Young were commissioned to oversee the remediation?---Overseeing the remediation, yes.

5 And they were undertaking that for several years, providing updates?---Right throughout the tranches that you've described, yes.

And then on this date, APRA said, "We have no further queries and consider this item closed"?---Yes.

10 I tender that document, Commissioner.

THE COMMISSIONER: Email, APRA to Colonial First State 21 September '17, concerning section 29WA update number 24, CBA.0001.0451.2600, exhibit 5.195.

15

**EXHIBIT #5.195 EMAIL, APRA TO COLONIAL FIRST STATE  
CONCERNING SECTION 29WA UPDATE NUMBER 24 DATED 21/09/2017  
(CBA.0001.0451.2600)**

20

MR HODGE: Were you surprised at the end of this three and a half year period that APRA never took any enforcement action with respect to Colonial First State for its many admitted contraventions?---No.

25 Why not?---We felt that we had – had worked through the – the contraventions and resolved them satisfactorily.

And – I'm sorry, resolved them what?---Satisfactorily, that we – we had worked to rectify the situation.

30

You had sought to obtain an investment direction, or eventually move them over to the MySuper product?---And then remediate.

35 And then remediate. Now, there had been a concern, hadn't there, about the effect of the ADA transition on revenue?---Yes, we would have looked at that.

And if we bring up CBA.1004.0024.4850\_E.

40 THE COMMISSIONER: Can I have the number again, Mr Hodge.

MR HODGE: Yes. CBA.1004.0024.4850\_E. I will give a different number. CBA.1004.0024.4914. So this is a paper to the board of Colonial First State dated 2 February 2016?---Yes.

45 And if we go to page .4916. This is the attachment to the paper which is the 2016 three-year rolling business plan for both trustees?---Yes.

And then if we go to the page which is .4930. See, this is in 2016 reporting back on factors that appear to be the major drivers of structural revenue margin decline?---Yes.

5 And you see that number 4, there had been a concern in relation to ADAs and section 29WA that it would lead to margin decline?---Yes.

But despite initial concerns, itnow seemed that it was unlikely that the ADA transition will negatively impact revenue margin?---Yes.

10

And so do you recall – this is, obviously, a couple of years later deciding that there is no effect, as it turns out. Do you recall that back in early 2014 there had been a concern about the ADA transition depressing revenue?---I don't remember that, you know, specifically, but we would have been looking at all of the impacts on revenue across that time, yes.

15

Do you recall that when the MySuper product initially came into effect, that there was a concern that transitioning ADAs to MySuper would depress revenue?---Yes.

20 And that was a concern held by the board of Colonial First State?---I don't think the board ever discussed that, but management would have been looking at that, yes.

And do you say that had no relevance to recommendations that management then made about transitioning?---I – I don't recall – I mean, we were generally aware over this time that our revenues were going to change for, you know, a number of the changes that were occurring in the industry at that time.

25

I tender that document, Commissioner.

30

THE COMMISSIONER: Board paper 2 February '16 concerning Colonial First State business plan CBA.1004.0024.4914, exhibit 5.196.

35 **EXHIBIT #5.196 BOARD PAPER CONCERNING COLONIAL FIRST STATE BUSINESS PLAN DATED 02/02/2016 (CBA.1004.0024.4914)**

40 MR HODGE: Do you recall that in 2014, when the issue of the contraventions of 29WA came up with APRA, that APRA suggested accelerating the transfer of ADAs over to MySuper?---Yes.

And was it the case that the board of Colonial refused to do so?---They – there was – I do recall the board being reluctant to do so, yes.

45

And why was the board reluctant to do so?---Because of the operational risk in the business at the time. We had declared the business out of risk appetite due to the

number of technology projects that were occurring at the one time, and there was a concern – you saw we were doing the ADAs in tranches. There was a concern that if we tried to bring forward the – the ADAs, that there might be operational risk.

5 Well, they were being done in tranches - - -?---Yes.

- - - because they were identified in a tranche as an offence occurred?---Yes. Yes. That's right.

10 So the initial tranche was all of the initial 13 or, as it turned out, I think, 15,000 offences?---15,000, yes. Yes.

And then what had occurred was, wasn't it, that it was assumed that initial group of 15,000, to the extent that they didn't provide an investment direction, would be the only group that would need to be moved over to the MySuper product?---Sorry, I'm not sure I followed that. Sorry.

15 I will put it another way. The initial plan to move the initial 15,000 over to the MySuper product was to occur because there had been contraventions in respect of them?---Yes, that's right.

And then as it turned out, as new contraventions arose - - -?---New tranches, yes.

- - - in respect of members, those members where there had been a contravention would be grouped up into a tranche and then transferred over?---That's right.

So that was why the tranches occurred. They just occurred as Colonial committed offences?---What I'm saying is what we ended up doing was we did end up accelerating moving it all across, because that obviously stops the recurrence, and there was a reluctance by the board to do that at – at the time that – I know it is in a board paper – because of the operational risk involved in doing that.

And was there some paper prepared that identified that operational risk?---Well, the – the risk appetite statement that we have, the board had – we had declared that we were outside of our risk appetite in relation to the number of IT projects that were underway at that time.

So that I can make sure that the Commission understands this, Colonial was already undertaking a number of IT projects?---Yes.

40 And the number that it was already undertaking was outside of its risk appetite?---Well, the overall – yes, that's right.

So to add one more computer project would be outside of its risk appetite?---The – no, because we were outside of risk appetite.

You're already outside of risk appetite?---We didn't want to risk errors or problems with such a big – these are very big complex transitions and the board had concern that the transition would only occur when we were confident that there wasn't going to be that kind of error with it. That's as I remember, you know, the conversation.  
5 There may well have been other factors in the decision. That's – that's what stands out to me.

That's the principal consideration that you can recall?---That's the one that I recall.

10 What I'm trying to understand is that one consequence of not implementing a computer project to move the ADAs over to the MySuper product is that Colonial is going to court offences. You understand what I mean? That is, it's going to take the chance that it is going to continue to contravene section 29WA?---I think we felt with the tranches that we had an appropriate mechanism in place.

15 Again, I'm – I don't know whether we're disagreeing with each other. The tranches arise as an – after an offence has occurred?---Yes.

20 So one thing that you are saying Colonial did was to decide that rather than implementing a computer project now to transfer the members over, it would just accept that there would be more offences and as each offence occurred, it would bundle those members up and transfer them to MySuper?---Yes.

25 And another aspect of this that seems to have been – seems to be missing, is there's presumably a question of whether it is in the best interests of the member to be in the MySuper product rather than in the particular investment option that they're in at that time. Do you agree?---Yes.

30 Was there any analysis performed that was presented to the board to indicate whether most members would be better off by being moved over to the MySuper product?---I don't recall it being presented to the board. There was discussion about that, and the – the management team were looking at what the impacts were, what the differences between the staying where they were and the MySuper were as well.

35 And does it strike you now, with hindsight, as strange that the board would elect not to implement this computer program or process because more computer processes are outside of risk appetite, without having detailed information about whether or not it would be in the interests of most members to move over to the MySuper product?---I think at the – at the – at that time the board did think that was the right  
40 decision that it had made.

Yes. What I'm asking is now, with the benefit of hindsight - - -?---Yes, we should have done more analysis. I would agree.

45 And do you agree that if you were to act in the best interests of the members, you would have to do more analysis?---It would have been preferable that we did more analysis.

5 Do you agree that it's not possible for you to know whether you were acting in the best interests of the members without doing more analysis?---The analysis that we had done, I guess, led us to believe that that was the case. I do accept when I look at this that the – the breaches were top of mind, and – and there could have and should have been more analysis, yes.

10 Sorry, what was the analysis that you say had been done?---The product managers had been doing analysis around what the differences between where members were and the MySuper option.

15 But they hadn't reported that to the board?---I think their – I can't recall and I haven't seen – reviewed the documentation. There was discussion but I think you're right. I think I would agree, from what I have seen, that there's – that there's insufficient evidence that that was done as robustly as it should have been.

20 So that we can just make sure that we are talking about the same thing can we bring up [Crt: CBA.1004.0020.1247. I am sorry, I said a one instead of a zero. Would it help - - -

20 THE COMMISSIONER: Not a happening thing, Mr Hodge. Not a happening thing.

MR HODGE: [Crt: CBA.1004.0020.1247.

25 THE COMMISSIONER: One of us is dyslexic, at least, Mr Hodge.

MR HODGE: Have I just said a different number?

30 THE COMMISSIONER: Possibly.

MR HODGE: We got there now.

35 So Ms Elkins, these are the board meeting minutes for a meeting of 30 April 2014?---Yes.

40 Are these – if we bring up pages 2 and 3 of this document and put it on the one screen. We're just trying to put together the time line of this. So you see there's an item starting at the bottom of page 2 which is Contributions Received Without Member Investment Direction?---Yes.

45 Could I ask you to look at that and tell me whether this is the discussion that you're thinking of?---Yes, that's the board meeting. Actually, I'm sure the issue was discussed at other board meetings but yes, this is the board meeting.

45 This is the particular one that you're thinking of. And in the second bullet point on the second page, it says:

*Noting that CBA is a related party and having considered the options, it is in members' best interests to transfer affected members' ADAs to CES where a valid direction cannot be obtained.*

5 ?---Yes.

And just so we're clear on what each part of that means, the affected members' ADAs, that means members who are affected in the sense that there has been a contravention of section 29WA?---Both them and the other ADA members in personal – FirstChoice Personal.

10 I see?---Yes.

And also the other ones?---The ones who weren't contributing.

15 Sorry, are you saying it's just the ones who are contributing?---I think this refers to both, that – that Commonwealth Essential Super has been selected as the MySuper product for all of the ADAs.

20 Yes. And Commonwealth Essential Super is that other - - -?---Yes, product.

- - - MySuper product?---Yes.

In a different fund?---Yes.

25 That has recently been established for CBA to sell through its branches?---Yes.

So what's resolved is that it's in the members' best interests to transfer those affected members over to CES?---Yes.

30 And then it's said:

*It is noted that any changes to the trustee's transition plan giving effect to the proposed remediation will be tabled at the next board meeting.*

35 ?---Yes.

And I tender that document, Commissioner.

40 THE COMMISSIONER: Board pack 30 April '14 for Colonial First State Investments Limited CBA.1004.0020.1247, exhibit 5.197.

45 **EXHIBIT #5.197 BOARD PACK FOR COLONIAL FIRST STATE INVESTMENTS LIMITED (CBA.1004.0020.1247) DATED 30/04/2014**

MR HODGE: And then if we bring up [Crt: CBA.0001.0451.0267. So this is an email from Ms Smith of Colonial?---Yes.

And it's to David Shade who we understand is from APRA?---Yes.

5

And you can see it's copied to a number of people, including you?---Yes.

And you see in the first paragraph it's referring to an email that has already been sent to Ms Ellis back in May of 2014 advising of what decision the board had made?---Yes.

10

And it says:

*After careful consideration –*

15

I am sorry:

*The board, after careful consideration, did not approve bringing this forward given the potential operational risk associated with undertaking a significant transaction at this point in time with the regulatory reform projects currently underway.*

20

?---Yes, sorry.

And does that affect the answer that you gave earlier as to what it was that the board was deciding in April? Let me explain?---Sorry, yes.

25

Isn't this saying that the board is not going to accelerate the transition of the other members in FirstChoice Personal Super which could only be members with ADAs. The only people that's going to accelerate are the members where there has been a contravention of 29WA?---Yes, sorry, I thought that's what we were talking about before.

30

We agree?---Yes.

35

That is maybe I had thought we were at - - -?---Sorry.

We were disagreeing. There was something like 70,000 members - - -?---Yes.

40

- - - who had been identified as having ADAs - - -?---Without contribution.

- - - within FirstChoice Personal Super?---Mmm.

Is that right?---I think it was 60,000, but yes.

45

60 – whatever number it is?---Yes.

And there was initially only a subset of 15,000 of them?---That were in breach, yes.

Where there had been a contravention of 29WA?---Yes.

5 And we are both agreeing, I think, that the board approved the accelerated transitioning of the members where there had been a contravention over to the MySuper product unless an investment direction had been given?---So that was the tranches?

10 Yes?---Yes.

It didn't approve it – an accelerated transition for members who weren't in the tranches?---Not at this stage, no.

15 At some later time, it did?---Yes.

And I'm – again, if we come back to the explanation you were giving us earlier, the reason – the principal reason, as you recall it, for not accelerating the transition was a concern about being outside of risk appetite in terms of the number of projects on foot?---The operational risk, which is the first bullet point here.

20 But you're already going to be transferring 15,000 members - - -?---Yes.

- - - from FirstChoice Personal Super over into the MySuper product?---So it's very different to do the smaller tranche than it is to do the – the bulk, I think was the issue.

I see. And - - -?---And there's other – I don't remember the other reasons, as well, as I remember the operational risk issues.

30 Well, the third reason, the low probability of breaching section 29WA - - -?---Yes. I'm sorry. We discussed that as well, yes.

- - - in the future – that definitely didn't pan out. Do you agree?---Again, my recollection of that was more about that we had a method of dealing with it, the tranches.

35 I see. So - - -?---And there were some – I think there were some manual controls as well.

40 I see. But the – you're saying you don't think it was ever thought there was a low probability of breaching the section in the future; it's just that once it was breached, there was a method of dealing with it?---I'm not sure. Obviously, the person – yes, I - - -

45 You're not sure?---I might be losing some of the detail from then. That's my recollection.

And then you see the last dot point is:

*The work already planned to engage with the relevant members and advisers regarding their intentions.*

5

?---Yes.

And that brings us, I think, neatly to the next topic. Can I tender that document, Commissioner.

10

THE COMMISSIONER: Email, Colonial First State to APRA 4 July '14, CBA.0001.0451.0267, exhibit 5.198.

15 **EXHIBIT #5.198 EMAIL, COLONIAL FIRST STATE TO APRA DATED 04/07/2014 (CBA.0001.0451.0267)**

20 MR HODGE: Now, one of the – one of the things that Colonial was doing throughout 2014 was contacting advisers to talk to them about getting investment directions from their members?---Yes.

25 And I want to show you some examples of that so that we can understand the particular process. If we bring up CBA.0001.0457.0095. This is a little later. So this is mid-2015. This is an email between an adviser, Mr Williams, and Mr Micallef, who is a relationship manager within corporate superannuation?---Yes.

30 Is a relationship manager – is that somebody who you would classify as being in this intermediary team?---Yes. Distribution, yes.

30

And that is dealing with the advisers?---Yes.

35 And you see, if we go over to page .0097. This is because – well, what prompts this chain of emails is that Mr Micallef, the relationship manager, is sending an email to the financial adviser with a list of the financial adviser's clients that have an accrued default amount?---Yes.

And then if we go back to the first page, .0095. We see the response is:

40 *If I read these correctly, the attached are around \$57 million of assets at, say, .33 per cent per annum means 188,000 plus insurance commissions could be lost if we do not get them to change or confirm their investment option; is that right?*

45 ?---Yes.

And then the response from Mr Micallef is to explain that yes, that is right, that if there is no investment direction given, the commissions will be lost?---Yes.

I tender that document, Commissioner.

5

THE COMMISSIONER: Emails between Micallef and Williams 1 May '15 concerning accrued default amounts, CBA.0001.0457.0095, exhibit 5.199.

10 **EXHIBIT #5.199 EMAILS BETWEEN MICALLEF AND WILLIAMS CONCERNING ACCRUED DEFAULT AMOUNTS DATED 01/05/2015 (CBA.0001.0457.0095)**

15 MR HODGE: And if we then go to CBA.0001.0452.1313. So this is Mr Micallef again, emailing another person who we understand to be a financial adviser?---Yes.

And you see, about two paragraphs down:

20 *These people have what is known as an accrued default amount, aka an ADA. ADAs need to be transferred to a MySuper option by 30 June 2017. There is no timeline as yet for when CFS will commence moving these ADAs to the Lifestage option.*

25 ?---Yes.

And the Lifestage option is the particular MySuper product that Colonial had put into the fund?---Yes.

30 And the – just so we're clear about this, because under the legislation, you could have either the single diversified option or a Lifestage?---That's right.

So Colonial was using a Lifestage?---Yes.

35 And then it's explained that at the moment, the relevant financial planning business is receiving grandfathered trail commission on these ADAs?---Yes.

And at the bottom of the page, in the second last whole paragraph, you will see:

40 *What it shows –*

This is in relation to the data analysis:

45 *is that there are around 148 active TF accounts and 79 of these have an ADA, meaning that 69 have provided an investment direction meaning that what they have in place right now will continue beyond 30 June 2017 and grandfathered trail will also continue.*

?---Yes.

And then in the next paragraph:

5           *With regard to our other discussion, grandfathered trail commission can  
continue when changing licensees.*

And then there's an explanation of Colonial's interpretation of the grandfathering  
rules?---Yes, that's - - -

10

And that reflects – I'm sorry?---I don't know if that is correctly our interpretation,  
but that is what this - - -

I see. It may no longer be the position that Colonial takes about the changing of  
licensees?---I'm not sure. Yes.

15

All right. I tender that document, Commissioner.

20           THE COMMISSIONER: Email, Mr Micallef and Bennett 29 September '15  
concerning MySuper accounts, CBA.0001.0452.1313, exhibit 5.200.

**EXHIBIT #5.200 EMAIL, MR MICALLEF AND BENNETT CONCERNING  
MYSUPER ACCOUNTS DATED 29/09/2015 (CBA.0001.0452.1313)**

25

MR HODGE: And if we then go to CBA.0001.0459.1788. You see this is an email  
from somebody else within Colonial First State over to some financial  
planners?---Yes.

30

And can I suggest – you may or may not know this, that this is effectively a standard  
form type of email that was being sent out to financial planners by Colonial First  
State?---It may have been. You're right.

35           You're not sure?---I don't know, no.

You're not sure. All right. And it's explaining the approach or the timetable for  
changing over – I'm sorry, for transferring ADAs over to MySuper?---Yes.

40           And it makes the point at the end of the second paragraph:

*As you are aware, MySuper products do not pay commissions.*

?---Yes.

45

And then you see a heading which is What We've Done So Far?---Yes.

And it's said:

5 *Over the past year, we've worked hard to contact investors with an ADA account via an extensive email, mail, and direct call-out campaign to ask that they confirm their investment direction.*

?---Yes.

10 And were you aware of that extensive email, mail, and direct call-out campaign?---Yes, that's the – yes, I was. Yes.

Well, I think you – it may – what you were about to say was that's the call script and letter we had already looked at?---Yes, there were other as well, yes.

15 That ultimately built up into a more expansive call-out and - - -?---I don't know if it was more, but – yes. Yes, there was, you know, exactly the design of that and exactly how many, I'm not sure, but yes, there was.

20 And the approach that was taken was the same as the call-out – the call script and letter that we've already seen which was to try to obtain an investment direction from the members - - -?---Yes, that's right.

25 - - - as distinct from provide the members with information so that they could assess whether they were better or for worse off under MySuper?---There were different call-out campaigns. So – yes, again, I – I can't say across the board, but there were different - - -

30 I see. The reassurance, can I suggest, that Colonial First State is offering to advisers by this form of email is that Colonial has itself put the effort in to try to obtain the investment direction?---Yes.

And obtaining the investment direction means the member won't transition to MySuper?---Yes.

35 And as the email says, MySuper doesn't get commissions?---That – that's right.

40 And so the reassurance being offered by Colonial First State to its advisers is we've done what we can to try to keep commissions for you?---That wasn't – that wasn't – you know, this was about – in – in our minds, this was about having clients and their advisers discussing the options. But you're right, that – that's the effect, yes.

45 But it can't have been about having clients and advisers discussing the options, because the entire point of the extensive email, mail, and direct call-out campaign was to get the investment direction without the adviser having to do anything about it?---That wasn't what we intended, but I can see that.

But it must have been what you intended because that's what you're telling the financial advisers:

5           *Over the past year, we've worked hard to contact investors with an ADA account via an extensive email, mail, and direct call-out campaign to ask that they confirm their investment direction.*

10           ?---And the driver for that was that we – we believed that people had made – or with their advisers, needed to consider which investment direction that they wanted, to stay where they were or to move to MySuper.

I see. You thought this would prompt them to then talk - - -?---Yes.

15           - - - to their advisers. I tender that document, Commissioner.

THE COMMISSIONER: Email between CFSL and financial planner 6 July '16 concerning CFS update transfer ADA accounts, CBA.0001.0459.1788, exhibit 5.201.

20           **EXHIBIT #5.201 EMAIL BETWEEN CFSL AND FINANCIAL PLANNER CONCERNING CFS UPDATE TRANSFER ADA ACCOUNTS DATED 06/04/2016 (CBA.0001.0459.1788)**

25           MR HODGE: And actually, just before we bring that down, if we look down about two-thirds of the way down the page, you see the heading What Can Advisers Do?---Yes.

30           And it's said:

*Advisers can assist any of their impacted clients by contacting them and asking them to confirm their investment direction using the relevant form.*

35           ?---Yes.

And do you say that means something different from this, which is advisers ought to contact their clients who have ADAs and get an investment direction from them to avoid the ADAs transitioning to MySuper?---Well, it wasn't to avoid it. It was if the – if they've agreed that that wasn't what they wanted to do.

40           But there's no information that is provided?---No, I do accept that. I agree.

45           And the only reason, can I suggest, why you would not provide the information is because the information as to whether the member is or is not better off in moving to MySuper is irrelevant?---No, I don't agree that it's irrelevant, but I do agree it should have been provided.

What is relevant is the thing that is stated:

*As you are aware, MySuper products do not pay commissions.*

5 ?---Well, yes, that is what it says.

If we go over the page to .1789. There's – this is setting out the attachments. And we see a data file containing all clients with an ADA account balance and their adviser details?---Yes.

10

And a data file containing all clients with an ADA account balance and their adviser details for FirstChoice Employer Super?---Yes.

And then it's said:

15

*Total exposure for PIS for FCPS –*

Could you explain to the Commissioner what PIS – sorry PIS is financial planners, I think?---Yes.

20

So total exposure for this financial planner for FirstChoice is Personal Super is \$1.96 million?---Yes.

And total exposure for this financial planner for FCES is \$24.6 million?---Yes.

25

And this is the exposure in terms of the value of assets that are presently in ADAs?---Yes.

But will transition over to MySuper without an investment direction?---Yes.

30

And thereby lose commissions?---Yes.

And that's why it's an exposure for the financial planner?---Yes, that is what that would be referring to.

35

Now, then, a few months later there's then a second stage to this email campaign, which is to give a reminder to advisers, and I will bring up [Crt: CBA.0001.0459.1839. So you can see, on the bottom half of the page, is an email back in July, which is that standard form type of email we've already looked at?---Yes.

40

And then at the top of the page is the reminder which is:

*We are quickly approaching the November transfer of accrued default amount accounts.*

45

?---Yes.

Continuing:

*As you are aware, a number of your advisers have exposure to these accounts which will be transferred if no action is taken. As at 1 July –*

5

and this is the financial planner:

*... funds under administration which will transfer was \$21.6 million.*

10 ?---Yes.

And, again, it would appear, on its face, that this is an email to encourage an adviser to stop the ADAs transferring over to MySuper by obtaining an investment direction. Do you think it served a different purpose from that?---I think it – I think it did, but I – I do accept that on its face it is – it is also doing that. Yes.

15

And the different purpose was, what, to get the financial adviser to engage with the member?---Yes.

20 I tender that document, Commissioner.

THE COMMISSIONER: Email CFSL to financial planner 16 September '16  
CBA.0001.0459.1839 exhibit 5.202.

25

**EXHIBIT #5.202 EMAIL CFSL TO FINANCIAL PLANNER  
(CBA.0001.0459.1839) DATED 16/09/2016**

30 MR HODGE: Now, you, I think – as I understood it, you were saying that you knew that there was this call-out campaign and mail-out campaign?---Yes.

Would you have approved the campaign?---No. No, I didn't.

35 Somebody else approved the campaign?---That's right.

And were you aware of the – what I will call the campaign to contact advisers?---No – not specifically, but no, I – I wasn't aware of that.

40 Can we bring up [Crt: CBA.0001.0479.0817. So this is the outbound call guide for ADA campaign call-outs?---Yes.

And you see there's this box at the beginning which is Background?---Yes.

45 So this is, presumably, the instructions that are being given to the call centre operator?---Yes.

And then you see that there's a heading about halfway down the page, which is What is Success?---Yes.

And success is described this way:

5

*Contacting client, letting them know that a change is coming to their super which may result in an increase to their ongoing annual fees, costs and insurance premiums. They need to be aware that they can opt out of this transfer and avoid an increase in fees and premiums if they confirm their investment direction with us.*

10

?---Yes.

15 Is this the generic script that was being used for the call-out campaign or you're not sure?---I don't believe so. I'm not sure but I – when I look at that, I think this was the script that was used for the people that were identified to currently have lower fees.

20 I see. You think this is a script - - -?---To a particular cohort.

Okay?---Again, I can't be certain, but when I read it, that's what I assume. And I know there were – those scripts were developed, different scripts for different cohorts.

25 If this wasn't a script for that specific cohort, then this statement here would be problematic, wouldn't it?---Yes.

Because it's not true, or you couldn't know whether it's true?---If you applied it to the wrong cohort.

30

And then if we go over the page, this is part of the call script and you see:

*If this transfer proceeds, your ongoing fees and costs may increase.*

35 ?---Sorry, where are you – where are we?

You see about a quarter of the way down the page?---Yes.

And then it says:

40

*This could make a difference to your super so we want to make sure you have the opportunity to decide whether or not you want your impacted balance to be transferred to the Lifestage option. We want to make sure you're aware that you can opt out of this transfer by confirming your investment direction.*

45

?---Yes.

And do you agree with me that if this is the script being used for all members, rather than members that have been specifically identified as having fees that will be higher under MySuper, then these statements are misleading?---I think I'm a bit lost now. Is that the same script or is this a different one?

5

Yes, this is part of the same script?---If – if it was applied to the wrong cohort.

All right. But you think this may be only applied to a - - -?---It was my understanding that we were identifying particular cohorts and calling them based on what they were.

10

I see. Presumably - - -?---I can't tell you for sure that - - -

15

I see?---That – that was my understanding.

I tender the script, Commissioner.

20

THE COMMISSIONER: Call script outbound call guide ADA campaign CBA.0001.0479.0817 exhibit 5.203.

**EXHIBIT #5.203 CALL SCRIPT OUTBOUND CALL GUIDE ADA CAMPAIGN (CBA.0001.0179.0817)**

25

MR HODGE: And then if we bring up [Crt: CBA.0001.0436.5386. So this seems to be the template letter that was sent out to members?---Yes.

30

And you see the beginning says:

*It's important we let you know your FirstChoice Personal Super account will be transferred to Commonwealth Essential Super in August 2016 unless we receive certain information from you.*

35

?---Yes.

And then it says – the heading is, How do you Stop your Account Being Transferred?---Yes.

40

And then there's a heading below which is, What Happens if you do Nothing?---Yes.

And item 3 is:

45

*Any insurance cover in FirstChoice will cease.*

?---Yes.

And item 4 is:

*Insurance cover in Essential Super is different and the level of cover and premium cost may not suit your needs.*

5

?---Yes.

And item 5 is:

10

*There will be transfer costs.*

?---Yes.

15 And can I suggest this letter is obviously drafted in a way to make the member concerned and apprehensive about their ADA being transitioned over to MySuper?---I agree that this letter is not balanced.

I tender the letter, Commissioner.

20

THE WITNESS: It - - -

THE COMMISSIONER: Template letter 29 April '16, CFSL to members, CBA.0001.0436.5386 exhibit 5.204.

25

**EXHIBIT #5.204 TEMPLATE LETTER CFSL TO MEMBERS  
(CBA.0001.0436.5386) DATED 29/04/2016**

THE WITNESS: It's okay.

30

MR HODGE: No, I'm sorry, Ms Elkins, I think we interrupted?---I was just going to say there was a second part to this that did set out – I believe this letter also had a comparison attached. I can't be sure. I can just see on here it says:

35

*We strongly recommend you read the enclosed flyer.*

It doesn't change what I've said. The front – the first page of this letter is not balanced.

40

MR HODGE: I see, the flyer:

*What will happen to your super?*

45 That's the point you're making?---No. Sorry, I think – I am not sure, so – and I accept that that's not balanced.

Now, one of the other aspects of this, can I suggest, is if there was no longer any adviser listed on the account, then Colonial was retaining the trailing commission?---Yes, that's effectively what would happen.

5 And if a new adviser became the adviser to the member, the trailing commission wouldn't start being paid to them, that if it was after 1 July 2013?---That's right.

Because you weren't permitted by FOFA to start paying it to them?---That's right.

10 And so instead, Colonial would just hang on to the commission?---Yes. Or the fee would be higher. That's right.

And are you aware that there have been some issues raised by financial advisers about the description of products as commission-free when, in fact, Colonial is  
15 retaining the trail commission?---I am aware there has been advisers raise the issue with us. I'm not sure about the link to commission-free. I think that's referring to something different.

I see. There's – one issue was there are some financial advisers who will rebate the  
20 commission back to their clients?---Yes.

And a complaint from one of those advisers was that they couldn't rebate the commission back to their client because Colonial was retaining it?---Yes.

25 And that has been an issue that has been ongoing, I think, well into this year; is that right?---Yes, it has.

Maybe if it would help, I might bring up some documents. If we bring up [Crt:  
30 CBA.0001.0457.3454. Commissioner – I think we did tender that one. So this is a chain of emails between a financial adviser, Mr Jopling, and a Mr Tully?---Yes.

And this begins – it becomes a little bit hard to follow, but if we go to page .3461. So it – you will see at the bottom of the page there was another email that's being  
35 responded to by Mr Jopling. Do you see right at the bottom of the page from Darryl Jopling?---Yes.

And then if we go over the page we can see what that email was. Can we bring both up on the screen. So Mr Jopling is asking for the MER of some commission free  
40 accounts?---Yes.

And then there's a response from somebody from Colonial as to what the management costs are?---Yes.

45 And then if we can now have up on the screen pages .3460 and 3461. Do you see Mr Jopling replies to that on 24 January to explain that the accounts that he's referring to are designated as commission-free accounts. See that at the bottom of the page on the left-hand side?---Yes.

And he says:

*I have checked the Morningstar website and for a normal MIF - - -*

5 what's MIF? Is that managed investment fund?---Yes, it's a unit trust.

Continuing:

*...without commission altered the indirect cost ratios are as follows.*

10

Then he sets it out?---Yes.

And then over the page he says:

15

*With a trailing commission built into the MIF product of .44 per cent as standard, I would expect a commission-free account to have a MER - - -*

And can you explain what MER is?---The manage – the cost, management expense ratio.

20

That's – is it management expense ratio?---Yes.

Continuing:

25

*...reduced by the .44 per cent not the amounts you have listed below.*

?---Yes.

30

And what Mr Jopling was trying to figure out is what's happening with the trailing commission, because he wants to rebate it to his clients?---Yes.

And then if we then bring up on the page .3458 and .3459 – bring up on the screen, I am sorry. We see the response on 31 January from the customer contact representative of client operations of Colonial First State is to say:

35

*Thank you for contacting Colonial First State adviser services with your inquiry. The accounts are commission free accounts. Therefore, commission is retained.*

40

And that means, as we understand it, the accounts are described as commission-free but, in fact, they include the amount for commission and Colonial keeps it?---I'm not sure where the reference to being commission-free – yes, yes, that is what's being – that is what the correspondence says.

45

And then this then goes on for a couple of months until we get to – if we go to page .3454. It has risen up to the level of Mr Tully, who is the business development manager for retail sales?---Yes.

And Mr Tully tells Mr Jopling on 9 March that Scott – who is Scott? You are not sure – Scott Henricks?---Operation. He leads the operation.

5 He was interested in the situation. And it has been sent off to Risk Compliance, and Mr Tully will keep Mr Jopling in the loop. And then we can see at the top of the page Mr Jopling writes again, on 19 March 2018, asking colourfully where things are at?---Yes.

10 I tender that email chain, Commissioner.

THE COMMISSIONER: Emails between January and March '18 Jopling, Tully and others, concerning MIF MER question, CBA.0001.0457.3454 exhibit 5.205.

15 **EXHIBIT #5.205 EMAILS BETWEEN JANUARY – MARCH 2018, JOPLING, TULLY AND OTHERS, CONCERNING MIF MER QUESTIONS (CBA.0001.0457.3454)**

20 MR HODGE: And then if we bring up [Crt: CBA.0001.0457.4183. So Mr Jopling keeps pursuing the issue. Do you see he emails on 20 March, and then he emails on 23 March and says:

25 *Hopefully the findings of the Royal Commission –*  
Sorry, 23 April and says:

30 *Hopefully the findings of the Royal Commission can Hep CFS to make a quick decision to benefit the client.*

And then he emails on 28 May and says:

35 *Probably a silly question, but any chance that clients are closer to getting their commission back? It's starting to mount up.*

Have you seen these documents in the course of preparing - - -?---In the course of preparing, yes, I have.

40 I tender that chain of emails, Commissioner.

THE COMMISSIONER: Emails between Jopling, Tully and – Jopling and Tully March to May '18, CBA.0001.0457.4183 exhibit 5.206.

45 **EXHIBIT #5.206 EMAILS BETWEEN JOPLING AND TULLY, MARCH – MAY 2018 (CBA.0001.0457.4183)**

MR HODGE: And there had been some internal issue raised about this. If we bring up [Crt: CBA.0001.0457.3756. So this is an internal email where the situation is explained, which is:

5 *Colonial First State Investment Limited's distribution have received the below complaint from an adviser, Mr Jopling, who is from Dover. The query was originally handled through the contact centre so may have already been escalated through to GCR.*

10 What's GCR?---Group customer relations.

Continuing:

15 *If this is the case would you please advise outcome. Similarly my distribution colleague, Mark Tully, may have raised through Distribution Plus which may mean the case is already in Firstpoint.*

Do you know whether the issue has now been resolved?---The issue hasn't been resolved but the issue is under review, yes.

20

And how can the issue be resolved, do you know?---We would need to, you know, decide that we're going to reduce the fees on these products and build the capability to rebate it to clients, yes.

25 Presumably, one way to resolve it would be to say we're not going to have trailing commission any more on these products?---Yes, that would be one way – well, we would still need to lower the fee obviously to take that out, yes.

30 And then you would reduce the fee because you're not paying trailing commission any more?---Reduce the fee. That's right, yes.

I tender that document, Commissioner.

35 THE COMMISSIONER: Emails between Swetland – Busuttil, Tully and others CBA.0001.0457.3756 exhibit 5.207.

40 **EXHIBIT #5.207 EMAILS BETWEEN SWETLAND-BUSUTTIL, TULLY AND OTHERS (CBA.0001.0457.3756)**

MR HODGE: Has Colonial considered reducing its commission?---Colonial is in the process of considering that, yes.

45 All right. It hasn't made any decision as of yet?---It hasn't made any decisions.

And when Colonial makes that decision, in what capacity is it going to make that decision?---I think I am kind of struggling with the – what the correct legal process for that would be.

5 One of the challenges for Colonial is this, isn't it: that it has – it is the trustee of a superannuation fund?---Yes.

And it's also the responsible entity for a managed investment scheme?---Yes.

10 It has the DRE structure where it's, the contributions are assets of the superannuation fund are invested in a managed investment scheme of which - - -?---Yes.

- - - it's the responsible entity?---Yes.

15 And it also has a relationship with advisers and advice licensees?---Yes.

It's now – I may be misremembering this – it's not itself an advice licensee, is it?---No.

20 But it has related entities that are advice licensees?---CBA has advice licensees, yes.

And in turn, those advice licensees are – have corporate authorised representatives and authorised representatives?---Yes.

25 And Colonial – there's a Colonial Financial Planning, isn't there?---No.

There's Commonwealth Financial Planning?---Commonwealth Financial Planning.

I see. That's owned by CBA?---That's right.

30

Not owned Colonial First State?---That's right.

Okay. And so it presumably has many competing interests all around it. It has its shareholder, who owns financial planning businesses, and it's the trustee and it's a responsible entity?---Yes.

35

So when its management comes to make a decision about whether or not it will give up commissions, how does it do that?---Well, we would do it – you know, a recommendation would come in our corporate capacity. Yes, I mean, we're undergoing this – this process now. So I think that it could – the – that kind of decision could arise in – in more than one way. I think once the recommendation is made – I mean, if you – if you're talking about – if Colonial is going to make a decision to cease paying commissions, I guess the effect of that on our aligned licensees is the same as on the unaligned. I don't see that as being different.

45

That is, they will lose revenue?---That's right. And whatever the legal construct of that is will be the same.

As the trustee, though, it has to only act in the interests of the members?---Of the members, that's right.

5 So when it faces an issue like we're charging trailing commission and then retaining it ourselves, how does it handle that in the interests of the members?---Yes. So that -- that decision hasn't -- that isn't a decision the trustee made. The -- the commission paying products always work that way. So, yes, I don't -- I think if that decision was presented to the trustee board they would be unlikely to make that decision.

10 I'm sorry, you're saying none of these products are -- they're all managed investment scheme products?---The one you were looking at is.

Yes?---But I'm saying the fact that the commission is paid out of the fee - - -

15 Yes?--- - - - is how commission paying products always worked, and we haven't changed that.

Yes?---So it's not a decision that has been before the trustees to make a decision to do that.

20

Do we agree that there are products issued by the trustee that have a trailing commission built into the fee?---Yes.

25 And do we agree that in the case of some of the members who are in those types of products, they do not have a linked adviser?---Yes.

And do we agree that in those circumstances, the amount for trailing commission is retained by somebody?---Yes, that's right.

30 And who is it retained by?---By Colonial.

By the trustee?---Well, in corporate capacity, I guess. I mean, yes. Yes.

35 I see. It's -- I understand what you're saying, which is it's retained by Colonial. It's not paid into the trust fund?---That's right.

40 And am I understanding you to say Colonial just hasn't yet considered how doing that could be in the best interests of members?---Colonial is now reviewing -- is now considering across the board what we need to do in regard to our commission paying products.

I see.

45 THE COMMISSIONER: And is this the first consideration you've given to it?---Yes. Prior to that, we -- yes, it is. Yes. Other than the introduction of FOFA and complying with the grandfathering provisions.

Is there any earlier occasion on which you have considered issues that could be said or could be described as arising from the fact that Colonial wears a number of different hats?---No.

5 MR HODGE: I want to move to a related topic in relation to commissions, which is concerned with another particular issue, which is when a member changes to a pension?---Yes.

10 And there was also an issue that arose in relation to commissions - - -?---Yes.

- - - in that respect for Colonial. Just before we get that and so that we can – I cannot have lost something else, can we bring up [Cr: CBA.0001.0446.0022. This is an internal email of CBA which you will see is sent by Ms Rubinsztein to a number of people including you?---Yes.

15 And it refers to productive meetings with the chief of staff to the assistant treasurer and also to treasury?---Yes.

20 And you see that the – this is on 13 February 2015?---Yes, sorry.

And you see the fourth point there is:

*ADA issues – suggested we talk to treasury.*

25 ?---Yes.

30 Do you know what the ADA issues were that Colonial was raising with the assistant treasurer and treasury in February of 2015?---I – I don't. I would have – I would guess, looking at this, I don't believe I was in this meeting. I would take that to mean – what date was it, sorry, 2015?

This is 2015?---No, I can't be sure.

35 You're not sure what it is. All right, I tender that document, Commissioner.

THE COMMISSIONER: Emails Rubinsztein Elkins and others 13 February '15 concerning summary of Canberra meeting CBA.0001.0446.0022 exhibit 5.208.

40 **EXHIBIT #5.208 EMAILS RUBINSTEIN, ELKINS AND OTHERS RE SUMMARY OF CANBERRA MEEETING (CBA.0001.0446.0022) DATED 13/02/2015**

45 MR HODGE: Now, a matter of a problem that Colonial had was the grandfathering of commissions when there was a transfer from superannuation to pension?---Yes.

And if we bring up [Crt: CBA.0001.0449.0019. Is this a document that you've seen before?---I've seen it in preparation, yes.

5 All right?---I think I have actually, yes.

Do you know what OSG is?---Something steering group – Operational Steering Group, something, yes.

10 And you see this is a presentation dated 10 February 2015?---Yes.

And if we go to page .0020. So this is the second page of the presentation, seemingly weighing up the risks of continuing or not continuing grandfathering of commissions?---Yes.

15 For a transition from super to pension. And it identifies that the revenue at risk is 2 to 10 million dollars per annum?---Yes.

20 And could you just explain to the Commissioner what does it mean that that is the revenue at risk based on not - - -?---I'm not sure how that number was derived. I would have thought there was a number of factors that they would have input into coming up with that number. That's – I noticed on the front of this pack, it's the regulatory reform team, so there would have been analysts looking at that question.

25 Okay, you're not sure?---I'm not sure what the factors that fed into that number are.

But the revenue?---Is our revenue. That's my interpretation of that.

The Colonial Group?---It may be adviser revenue, but I suspect it's ours.

30 Okay. I tender that presentation, Commissioner.

THE COMMISSIONER: Review of grandfathering super to pension 10 February '15 CBA.0001.0449.0019, exhibit 5.209.

35

**EXHIBIT #5.209 REVIEW OF GRANDFATHERING SUPER TO PENSION  
(CBA.0001.0449.0019) DATED 10/02/2015**

40 MR HODGE: And what happened was that Colonial didn't stop grandfathering commission from super when there was a transition over to pension?---Initially there was a change in the regulations that – that required us to subsequently do that, yes.

45 That's not quite right, is it? What happened was FOFA came into effect from 1 July 2013?---Yes.

And it required there to be no commissions paid on new products entered into after 1 July 2014?---Yes.

5 So I think I said it came into effect on 1 July 2013?---Yes. There was a - - -

That's not quite accurate?---That's right, yes.

It came into effect in 2012. Agreements had to be in place by 1 July 2013?---Yes.

10 You couldn't pay commission on a new product entered into after 1 July 2014?---Yes.

And when there was a change of government, the new government had committed to rolling back FOFA in some respects?---Yes.

15

And the new government put up regulations that would have delayed the start of – or extended out the time in relation to FOFA?---I don't - - -

20 You're not sure of it?--- - - - specifically remember, though. Yes.

In any event, the new regulations would have changed the 1 July 2014 effect. And then they were disallowed - - -?---Yes.

25 - - - in the Senate?---Yes.

And so the consequence was there was a brief period of time when Colonial thought it wouldn't have to comply with the full FOFA, and then it did have to comply with the full FOFA?---I'm not sure if that's quite the right characterisation but that – the – the outcome was that we had to, yes, make a change. That – that's right.

30

And then if we bring up [Crt: CBA.0001.0456.0953. This is a letter dated 29 May 2015 to ASIC?---Yes.

35 Is this a letter you've reviewed in the course of preparing to give evidence today?---I think so, yes.

Do you recall that CBA, on behalf effectively of Colonial, sought a no action letter from ASIC in relation to its continued payment of commissions - - -?---Yes.

40 - - - in relation to the - - -?---Yes.

- - - super to pension transition?---Yes.

45 And CBA put up some arguments as to why it is that it might be permissible to continue with the fees?---Yes.

And one issue, which I note really for the benefit of the Commissioner, if we go to [Crt: CBA.0001.0456.0959. You will see that CBA flirts with the idea that perhaps Colonial First State, as trustee of the super fund is a platform operator?---Yes.

5 And then it would be able to grandfather commissions?---That – that’s the idea that they’re floating, yes.

But then, ultimately, it doesn’t press that point and - - -?---No.

10 And it seeks the no action letter and an extension period in order to comply?---Yes.

Through to 1 October 2015?---Yes.

I tender that document, Commissioner.

15

THE COMMISSIONER: Letter CBA to Commissioner Tanzer ASIC 29 May ’15 CBA.0001.0456.0953 exhibit 5.210.

20 **EXHIBIT #5.210 LETTER CBA TO COMMISSIONER TANZER OF ASIC (CBA.0001.0456.0953) DATED 29/05/2015**

MR HODGE: And if we bring up [Crt: CBA.0001.0456.1399. This is the response from ASIC to the request for a no action letter?---Yes.

25

And again, did you review this in the course of preparing to give evidence?---Yes.

30 And if we go over the page to page 2. There is an explanation from ASIC about its facilitation approach in relation to compliance following the disallowance of the regulations?---Yes.

35 And it says, in effect, that it’s allowed entities making a reasonable effort to comply with the law by 1 July 2013 to do so, and in those circumstances ASIC wasn’t going to take action for inadvertent breaches?

THE COMMISSIONER: 1 July ’15.

40 MR HODGE: I’m sorry, 1 July ’15?---Yes.

Thank you, Commissioner.

And – but in respect of CBA, you can see in the middle of the page it said:

45 *While we do not have enough information to determine whether the licensees were complying with ASICs facilitative compliance approach, we note that*

*based on the information available, it does not appear that the licensees were making reasonable efforts to comply with the law by 1 July 2015.*

?---Yes.

5

And what then happens is ASIC won't give a full no action letter. It instead gives a qualified or limited no action letter?---Yes.

I tender that document, Commissioner.

10

THE COMMISSIONER: Letter ASIC to CBA 22 July '15, CBA.0001.0456.1399, exhibit 5.211.

15 **EXHIBIT #5.211 LETTER ASIC TO CBA (CBA.0001.0456.1399) DATED 22/07/2015**

20 MR HODGE: And this prohibition on continuing grandfathered commissions when there was a transition from superannuation over to pension, that was something that you had personally lobbied against?---Yes, I had lobbied for clarity around it, yes.

25 Let's bring up CBA.0001.0446.0003. So this is an email of 25 October 2013. It's an internal email, but it's recording a meeting that has occurred between a number of people on behalf of CBA, including you?---Yes.

And it's a meeting with certain treasury officials and an adviser to one of the then ministers as part of a confidential consultation with industry on FOFA issues?---Yes.

30 And one of the things that you were lobbying for was the removal of opt-in and fee disclosures?---I don't think I was – that's – wouldn't have been my area of expertise in this – in this meeting.

35 Was that the position - - -?---I don't remember to be a removal of it. I thought it was some aspect of - - -

A limitation of it in some respects?---I am not sure. As I said, that wouldn't be my area of expertise.

40 If we go over the page to .0004. We see there's a heading which is Grandfathering?---Yes.

And the second point is:

45 *FirstChoice Super to pension issue (grandfathered commissions) treasury explained the regs were not intended to impact super funds where single*

*interest covers super and pension accounts by ceasing grandfathering.  
Treasury would consult with Colonial First State offline to resolve a win.*

- ?---Yes, that's what it says.
- 5 When you say you were seeking - - -?---Clarification.
- Yes, I think - - -?---Yes.
- 10 - - - that's right. You said you had lobbied for clarity?---Yes.
- Around it?---Yes.
- 15 It was more than that, wasn't it. You were lobbying to be able to grandfather commissions when it went from superannuation to pension?---Yes, we were, and for that to be consistent, you know, not different based on the product structure.
- And at the time, that is, in 2013, you were a director of Colonial First State?---Yes.
- 20 And, as we've talked about already, Colonial First State, obviously, has many hats, but one of its hats is to be the trustee of the superannuation fund. How was it in the interests of the members of the fund to grandfather commissions when going from superannuation to pension?---So we were – you know, I was supportive of the – the grandfathered arrangements within FOFA. And, as I said, the lobbying effort we
- 25 were making was to get clarity and the same treatment across the board for the way grandfathering was treated between super to pension, and we were also of the view that some people would choose to pay for their advice by the commission structure.
- 30 How was it in the interests of the members of the fund to grandfather commissions when going from superannuation to pension?---In hindsight, I would agree that it's not and we, you know, shouldn't have been lobbying for that.
- 35 Now, this also means that at least from October 2013 Colonial understood that if the regulations didn't pass, then the consequence would be that commission was prohibited when the product changed over from super to pension?---Yes.
- Do you agree?---Yes.
- 40 And so in those circumstances, how did it come to be that Colonial was still paying commission on the pension product after 1 July 2014 and after the regulations hadn't passed?---I don't think I can recall sufficiently how that occurred.
- I tender that email, Commissioner.
- 45 THE COMMISSIONER: Email Russell to Rubinsztein and others, 25 October '13 concerning meeting with treasury/Minister's office re FOFA, CBA.0001.0446.0003, exhibit 5.212.

**EXHIBIT #5.212 EMAIL RUSSELL TO RUBINSZTEIN AND OTHERS  
DATED 25/10/2013 (CBA.0001.0446.0003)**

5 MR HODGE: Now, once ASIC said you've got until 1 October 2015 to stop  
commissions in relation to these grandfather – or you've got to stop grandfathered  
commissions in relation to transfers from super to pensions, it was then necessary for  
Colonial to engage with its related – or with the advisers?---Yes.

10 And can we bring up CBA.0001.0457.0254. So this is the sample adviser email  
that's to go to – I think this is really the adviser groups?---Yes.

Have you seen this before?---I've seen it in preparation.

15 The course of preparing. And it explains in the key points:

*Colonial First State is ceasing grandfathered payments on super to pension  
transfers and pension consolidations that occurred during the facilitative  
compliance period of 19 November 2014 to 30 June 2015.*

20 ?---Yes.

Continuing:

*Clients will be notified from the end of August 2015.*

25 ?---Yes.

And then you see there's a heading which is Implications for Your Business?---Yes.

30 And it says:

*We understand this change may require you to reengage with your clients, and  
Colonial First State is prepared to reimburse the cost of one financial  
consultation up to a value of \$750.*

35 ?---Yes.

40 And that seems to carry with it the implication that Colonial well knows that the  
advisers receiving trail commission may not be in active engagement with their  
members?---No, my understanding of that is that it – the payment was – because if  
commission was going to be used to pay for the advice, that commission would not  
be there, and this would enable these members to have that consultation with their  
adviser and agree on – on how their advice was going to be established going  
forward.

45 Can I suggest this: that what was plainly envisaged here was that it would be  
necessary for the adviser to now make contact with the client and set up some sort of

ongoing fee arrangement in order to maintain revenue?---That would be necessary, yes.

5 And the – what Colonial is offering to do is to pay for that initial consultation, pay the adviser to have that initial consultation?---Well, I'm not sure if it's – if you're characterising it the way we characterised it then, but, yes, we were offering to – again, this is our error. It's our misinterpretation of the law that had led to the problem, and we're wanting to make sure that our members are discussing with their advisers the way their advice relationship is going to be structured going forward.

10 I'm not sure I understand why you're saying this is a product of your error. Legislation has come in which prohibits the payment of commissions, yes?---Yes.

15 And the consequence is if the financial adviser wants to be paid money by a client, they have to enter - - -?---Yes.

- - - into an agreement with the client to provide a service in exchange for that payment?---Yes.

20 Yes?---Yes.

And the premise of this letter is you may need now to reengage with your clients?---Yes.

25 Because when you were getting trail commission you weren't engaged with your clients?---I don't think that's the construction we - - -

30 And to maintain its relationship with the advisers, Colonial was prepared to reimburse the cost of that initial consultation?---That's what we thought was the best way of helping people through this period.

But it's about helping the adviser, isn't it?---Well, we thought we were helping the member by ensuring that they got advice.

35 But the advice that you anticipate is going to arise from this is that the member will have committed to an ongoing fee agreement with the adviser. Do you agree?---Well, that's – that's the discussion that would take place between the member and the adviser.

40 And you're paying for that discussion to occur in the anticipation that that is what the adviser will be seeking?---Well, we didn't anticipate what would happen in that discussion, but – but, yes, this is what we decided to do.

45 And the \$750, where was it going to be funded from?---From our corporate account.

I see. I tender that document, Commissioner.

THE COMMISSIONER: Changes to FirstChoice grandfathered accounts sample adviser email, CBA.0001.0457.0254, exhibit 5.213. Tell me when you get to a convenient point, Mr Hodge.

5

**EXHIBIT #5.213 CHANGES TO FIRSTCHOICE GRANDFATHERED ACCOUNTS SAMPLE ADVISER EMAIL (CBA.0001.0457.0254)**

10 MR HODGE: I think – I think that’s a convenient point, I say as I choke, Commissioner.

THE COMMISSIONER: Well, if I’ve choked counsel, it is time to call it a day. 9.30 tomorrow.

15

MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Can I ask you to be back at 9.30 tomorrow, please, Ms Elkins.

20

<THE WITNESS WITHDREW

[4.23 pm]

25 **MATTER ADJOURNED at 4.23 pm UNTIL WEDNESDAY, 15 AUGUST 2018**

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