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TRANSCRIPT OF PROCEEDINGS

O/N H-919879

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

9.31 AM, THURSDAY, 16 AUGUST 2018

Continued from 15.8.18

DAY 48

**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 I. PIKE SC appears with DR M. COLLINS QC for ANZ

MR R. HOLLO SC appears with MS A. LYONS for AMP

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Commissioner, Mr Pankhurst is continuing to give evidence.

5 THE COMMISSIONER: Yes. Would you mind coming back into the witness box, please, Mr Pankhurst.

10 <MARK JAMES PANKHURST, ON FORMER OATH [9.31 am]

<CROSS-EXAMINATION BY MR HODGE

15 THE COMMISSIONER: Do sit down. Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner.

20 Mr Pankhurst, one of the other matters that you've given evidence about in your statement is ANZs A to Z selling review?---That's right.

And ANZ has recently given an enforceable undertaking in relation to the use of – or the sale of superannuation in connection with the A to Z review?---That's right.

25 And were you involved in the negotiation of that enforceable undertaking?---No, I wasn't. I was at the very end of the process. The product head was asked to just provide a standard sign-off on that.

30 I see. But were you involved in the process of the development of the sale of superannuation together with the A to Z review?---No, I wasn't.

Was it somebody within your team who was responsible for doing that?---No.

35 Okay. It's somebody entirely different who is responsible for that?---That's correct.

Okay. So the evidence that you've given in relation to this is just based on information that you've obtained from other people?---That's correct.

40 Okay. Well, we will do the best we can. Can you start by explaining to the Commissioner what the A to Z review is?---It's, effectively, a process where a customer will come into a branch and they will have a conversation with a banker, a banker who is allowed and accredited to provide that service to customers, where they will simply be looking at situations around their – what they currently own, what they currently owe, etcetera, almost like a balance sheet conversation that they
45 have about financial needs, primarily for the purpose of banking services.

And so a customer comes in, they're not coming in to do an A to Z review?---They – generally – my understanding is that a customer will come in, they will come into a branch or they will make an appointment to see a – to see a banker and they will go and meet in a room and go through that process.

5

Why do they think that they're coming into the branch? What is the product they're seeking to obtain?---I would only be speculating on – on my own personal view, so I couldn't give you a definitive answer but I assume they've come to the bank for – for some sort of solution of some sort.

10

So they do the review and then once all of the questions are answered, then the banker suggests that they might be interested in superannuation?---As, in the course of filling out the statement, it was explained to me that they go through a process. It's largely driven by the banking solutions, and primarily they go through that

15

process. The banker then advises the customer that the A to Z review has now finished, and then provides a – what they call a de-linking statement which effectively says that that – that any information or any further information that they provide about any other products or services is – is not going to take into consideration the information that they've provided, and if the customer - - -

20

THE COMMISSIONER: Sorry, repeat that again?---So - - -

What's the proposition?---So once the – once the A to Z review is – is finished, the banker then will say to the – say to the customer that that – that it is completed and

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that they will, if – provide them with a – a de-linking statement, if you like, which says that any other products or services that they may talk to them about will not include their – the information that they have provided, and they will then ask the client, once they've done that, whether or not that customer is interested in understanding anything more about superannuation.

30

MR HODGE: Can we bring up exhibit MP-215 to Mr Pankhurst's statement which is ANZ.800.873.0025. So this is something that you've exhibited, Mr Pankhurst. Perhaps if we blow up the text of it?---That's correct. That's the statement.

35

That's the – if we blow it up, that's the de-linking statement?---That's correct.

So just so we can understand in context what the process is, if we put together paragraph 289 of your statement with this, the branch staff member will ask the customer questions about the customer's financial situation?---That's correct.

40

And discuss the customer's goals and needs?---I can't be certain about goals – goals and needs but I – but it will be about their financial situation.

If it helps you, you've deposed at paragraph 289 of your statement:

45

An A to Z review is a process in which a branch staff member asks a customer questions about the customer's financial situation and has a discussion about the customer's goals and needs.

5 ?---Thank you. Thank you.

That's still your evidence?---That's correct. Thank you.

10 And it involves, as you explain it, three steps: first, a discussion about the customer's current financial position, what they own, owe and spend?---That's right.

Second, discussing the customer's future goals?---That's correct.

15 And then, third, the staff member identifies any retail banking products or services that could be relevant to the customer?---That's correct.

20 And is the de-linking statement made between B and C, that is, is it made between discussing the customer's future goals and discussing with the customer an identification of retail banking products that might suit them?---In my understanding, it is made after any discussion of banking products.

25 I see. So it will – the bank – the employee at the bank will go through these three steps, identify various banking products that the customer might be interested in, and then say, "Now that we've completed the A to Z review, would you like me to provide you with some general information on ANZ Smart Choice Super which is designed to be a simple low cost way for customers to manage their superannuation."?---That is correct.

30 "Please be aware that I won't be able to use or reference any of the information you've already provided me when discussing this product with you."?---That's right.

35 And that is intended to de-link the A to Z review from the offer of superannuation in what way?---So it's, effectively, trying to be upfront with the client and say that if you're interested in us talking to you about this other product, I can do that on a general information basis only, but I won't be able to take into consideration any of the – the goals, needs, information that you've told me previously.

40 I see. And if we then go to the next exhibit to your statement, which is MP-216, which is ANZ.800.873.0001. Could you just explain to the Commissioner what this document is?---I'm assuming – I would – I would need to refer to the next page to be completely clear, if that is at all possible.

45 Yes, can we bring up page .0002?---I believe – I believe that this is a – is a document. It's a general advice warning that the staff member, that – the ANZ banker would read out aloud to the customer. I believe that may be the case. I'm just trying to remember exactly but I believe that may be the case.

I understand. So it goes like this: they do the A to Z review, then they make the de-linking statement. Then if the customer says anything to indicate they might be interested in the superannuation product, then the bank staff – bank branch staff member will say, “Please note, I can only provide general advice on this product so you need to consider if it’s right for you.”?---That’s correct.

I see. And this process was regarded by ANZ as being the provision of general advice only and not personal financial advice?---That is correct.

10 And ASICs position ultimately became that because it was linked up to the A to Z review, it was akin to personal financial advice?---My understanding was that ASICs perspective on this was that it was the proximity of the customer being taken through an A to Z review and then being, despite the de-linking statement, and then despite this general advice warning, it was actually the proximity between those that was the problem in this situation.

Does ANZ regard what is being provided by the bank branch staff member to the customer as advice?---In – in which situation? Do you mean the A to Z review or do you mean in the general PC?

20 Well, let’s take it in turn. Does it regard the A to Z review as the provision of advice?---I wouldn’t be able to comment on that particular piece, but in terms of the – in terms of the discussion around Smart Choice that would be – the view was that that’s a general – general product advice or scripted general advice.

25 What does advice mean, though, in this context?---In this situation, it’s really just talking about a product, and its features. And what it costs and how it works, really.

30 Do you think it’s misleading to even call it advice?---My personal view is it’s – it’s a challenging – it’s a challenging topic because you’re trying to just give information and you’re needing to do it within a legal framework. And so the general advice rules is what you’re trying to play within and trying to make sure that you’re not misleading the customer, you’re not giving them anything that’s advice, you’re just simply telling them this is what the product does and that’s effectively what it is.

35 And I think that’s – the intention here was simply to just make people aware of what the product did.

It must be a bit more than though, isn’t it, it’s not just telling people about the product. ANZ wants people to take the product up?---That’s correct, yes.

40 So it’s doing something with the aim of causing people to enter into the product?---It’s – it’s making them aware of it. They’ve indicated – to get to that point – that they would be interested in that type of a product. And so they are offering that information. But you are – you’re right, the – the – ultimately, the bank is looking to – to open those kinds of accounts for - - -

It’s trying to sell something to the customer?---That’s right. That’s correct.

And it's indifferent, isn't it, as to whether or not this particular product is in the best interests of the customer?---The – the product is a – one of those set and forget products which effectively – any of the information that you've been provided will largely be irrelevant because it's a life-stage-based product. It's simply a – whatever
5 your age is really determines what the product will be in terms of both the investment and – and in terms of what the insurance will be. So it's actually – even the information that you've provided, that's not going to change anything within the product. It – it's a one size sort of fits all depending upon your age. So I'm not sure what you mean by "indifferent", but ultimately the conversation prior and the
10 information prior is not going to have any – any impact on the outcome.

I mean it's indifferent in this sense: that it does not care whether or not a customer coming into the ANZ branch would be better off in a superannuation product offered by a different entity compared with the ANZ product?---This particular process is not
15 comparing other products. That's correct.

And it doesn't – I just want to make sure we agree with each other. ANZ is selling this product. It is indifferent as to whether or not this product is in the best interests of the people who might take it up?---It – it – it's – indifferent, I – that's not a word
20 that I am comfortable with. It's effectively just saying if you have a need for a product, this is the product that we have. It's not going through a full needs analysis, it's not going through an analysis. If the customer was – and part of the process was if they had identified that the customer wanted to go through full financial planning advice, then that – that banker could refer that person to a full financial planner and in that situation the financial planner could go through that process. This is simply
25 saying, "This is a product, this is what we have and this is what it does. It's up to you to make a decision if you wish to invest in that product."

Can we bring up ASIC.0041.0002.8478. Actually, I'm sorry, just before we go to
30 that document, I might get you to have a look at a different document, which is the agreement between the trustee and ANZ. So could we bring up ANZ.800.778.0001. So this is a deed of amendment to the services deed between ANZ and OnePath Custodians?---That's correct.

35 And OnePath Custodians is the trustee in respect of the ANZ Smart Choice product?---Yes.

Was the ANZ Smart Choice product established specifically for the purpose of being sold in ANZ branches?---I – I don't know specifically. I can't answer that
40 accurately.

Was it intended that its customers – that its customer base come from somewhere other than ANZ selling the product through its distribution network?---Again, I would be speculating but I assume that was primarily built for distribution through
45 ANZ but it could be available through other – other channels, online channels, etcetera.

If we go to page .0002. So we see this is effectively the front part of the deed. And it's dated 3 August 2012. If you look under Background, subparagraph (b):

5 *OnePath Custodians established a new online superannuation product known as "ANZ Smart Choice".*

?---That's right.

10 And then subparagraph (c) says:

ANZ Smart Choice is a direct superannuation, transition to retirement and pension product manufactured by OnePath Custodians and distributed through ANZs retail bank distribution channels.

15 ?---Yes.

So that seems to suggest it's set up for the purposes of them being distributed through the bank?---That's what that says. That's correct.

20 But you're making the point the distribution channels might not be limited to – through a branch. It might also be online sales?---And it's – it's possible – and – and I'm – it's possible that there could be a – another advice group, etcetera, or there could be another provider at some point that may wish to offer that product at some point, but this is saying that it was primarily developed for the banking channels, so I
25 would agree.

And in terms of your responsibility or role in this, do you come in at the point where OnePath Custodians is manufacturing the product?---I personally look after the product that – and – and have done so since about 2015, so - - -

30 I see. It had already been started up before you took - - -?---That's correct.

- - - on your current role?---That's right.

35 Your role is not in relation to anything to do with the selling. Your role is just in relation to the manufacture and operation of the product?---That's correct.

And how has the product performed, net of investment – net of administration fees over the last few years?---It's – against its – its peers – look, I think we would like –
40 we always would like improved returns. I think we would always like better returns. I think if it's in – in certain life stage cohorts it has been good. In some of the more conservative ones, we've not been as happy and we've – we've done some – we've made some changes to it to – to sort of change it. It has got some quite conservative aspects to it so we've been looking at the strategic asset allocation and those sorts of
45 things. So I think there's always work to do to make sure that these things are delivering for customers.

Is this a fair summary of what you're saying: that overall, you are not happy with the performance to date of the product?---I have been in certain times, but I – and there has been – there has been times where I have been very happy with it, and – and versus its sort of core peers, it has done quite well. It's a very large market that we're in and so we want to make sure that it's – it's competitive. And I guess, you never get happy. You always want this to – to perform better.

It's not a MySuper product, is it?---No, it's not.

And do you know whether at some stage ASIC was also concerned about whether people might think it was a MySuper product?---I believe that there was – yes, yes, I think there was a – there was an error that we had made in a – in a website or a publication that had put the wrong product label on – on a video or something like that.

It's confusing because there is more than one ANZ Smart Choice product?---That is correct.

And there is an ANZ Smart Choice product that is a MySuper product?---That's right. One is called Super and Pension and one is called Smart Choice for employers and their employees, that is correct.

There is then another ANZ Smart Choice product which is the one being sold through the branches which is not a MySuper product?---Sorry, they're the two that I was talking about.

Yes?---The Super and Pension is through the branch.

The one through the branches?---And the employer product is a MySuper offering.

Are they managed in different ways? Are they kept separate?---We manage them within the same – the same teams and we manage them as a – as a core, effectively, and – and they're very, very similar. However, the employer offering provides more functionality. Largely it's one being a MySuper offering but it also caters for the needs of employers. Contribution capabilities and all sorts of different other things. Fundamentally they're very similar.

Is the attribution investments between them the same?---Yes.

So it's just the same investments?---That's correct.

Are the fees the same?---Yes.

All right. So it's not a MySuper product but it's the same as the MySuper product?---It – yes, it is but there's more. There's – in the MySuper product it has more investment options and it's different insurances and those sorts of things but the core of it is – is the same.

And then if we go to page .0028. These are the services that are to be provided by ANZ to the trustee?---That looks like the schedule.

5 And if we go over the page to page .0028 – I’m sorry, 29, we see what was one of the services, which was originally contracted under section 1.3, was that:

Wealth-accredited ANZ branch staff to provide customers with ANZ Smart Choice product information using scripted general advice protocols within the A to Z review process.

10

?---I see that. This was a surprise.

It was a surprise?---This was a surprise to me, yes.

15 To you?---Yes.

When did it take you by surprise?---Well, when we were doing the – when we were preparing the witness statement. There – there was – in my preparing of the witness statement and referring to other people, it was – it had never been explained
20 anywhere and it was not clear to people that – that it had ever been within the A to Z review process. It had always been after the A to Z review process.

I see. But in any event, OnePath Custodians had contracted to have ANZ offer the Smart Choice product to customers who came into branches, originally within the A to Z process and then subsequently it’s amended to say after the A to Z process?---It
25 was amended. It was a surprise, as I said. I wonder whether that was a drafting error. I’m not sure, but you’re right, it was amended.

30 If it was an error it persisted until an amendment to the deed in 2016?---That – that’s right. There was an amendment.

Two years after ASIC started raising an issue about it?---I – I – I – all I can say is that there was an amendment and that’s roughly where – about the timeframe.

35 And how does ANZ get remunerated for providing this service?---I – I don’t know. I don’t – I’m not aware.

40 Is there a revenue sharing arrangement in relation to the Smart Choice product?---I’m – I’m not aware, I’m sorry. I don’t know.

When you manufacture and operate the product, do you know how much money from the fees that come in from the product goes back to the ANZ Group?---Only through the – the OnePath Life. There’s – I’m not aware of any – personally, I’m not aware of any - - -

45

Sorry, only through the what?---Only through the fees that we charge for the customer.

Yes?---That we charge. And that, as far as I'm aware, is the only revenue amount that would be – that the bank as an entity would be receiving on this. I'm – I'm not aware of anything else.

5 You think it would only be by a dividend paid back by the holder – by OnePath Custodians back to the ANZ Group?---Just in the – in the normal way that we operate as a – as a business, yes. I – I – yes.

10 I think what you're saying is you don't think there's any specific money that flows back to ANZ in relation to this service?---I – I don't believe that's – I don't believe so.

15 ANZ just receives whatever money it receives under every other arrangement it has with the custodian?---That's right. As – as I understand it.

20 And by bringing in more customers into the superannuation product, that increases the amount of money flowing through those other doors back to ANZ?---It's – it's seen as – Wealth is a core need of customers and a lot of the research that we've done indicates that customers with a Wealth solution tend to be – stay with the bank longer and they tend to be more satisfied. It's seen as a way to deliver a more holistic approach to retaining and growing the client base.

25 And how successful was the selling of the super product through the branches?---I – it depends on – on what you define as being “successful”. A lot of – whilst clients took out the product they did not have to invest in the product and roughly around 47 per cent of customers that have actually opened an account have actually invested into that product. And it's – so it really depends on – on your – your definition of success.

30 What's the value of the funds under management that has flowed from the branch selling?---I don't – I may – I may have included that in my second witness statement. Is that – there was some additional numbers that were provided. So if I could just refer to the – the second statement.

35 Yes. If you go to – is this what you're thinking about, your table on page 2 of your supplementary statement – I'm sorry, I don't have a doc ID for the supplementary statement?---Yes, I – it's on page 2. I believe that might answer your question.

40 Yes. Is the answer to my question that from when the branch – in-branch distribution model started in 2012 through to 31 May 2016, the value of contributions or rollovers into the product was a little over \$2 billion?---That – that's
- - -

45 And presumably there are more – there's more money that continues to flow in from those customers?---That's right. This particular product has about 3.6 billion in total.

And is that regarded by ANZ as a successful implementation of the branch selling model?---I – I would say that we believe that the product is – it’s a long-term – it was – it was designed as a long-term super savings vehicle with a long-term perspective. I think it’s – it’s probably on its way to achieving its targets at this stage but it’s – it’s not there yet. But these are – these are long-term investments when you build products like this. They take some time.

Do you agree that the key risk in relation to the sale of Smart Choice Super is that customers will switch their superannuation without understanding the potential consequences and end up with a less suitable product than their existing funds?---I wouldn’t – no, I wouldn’t say with this product. I think that is a general risk with all superannuation products, that customers make decisions without fully understanding exactly what they’re – they’re in.

Let me show you a document. This is ASIC.0041.0002.8478. So this seems to be an internal presentation of ANZ concerned with the sale of Wealth products via the retail distribution method. Have you seen this document before?---I don’t believe so.

Okay. And do you see it’s said to be a product of Australia Division Compliance?---That’s correct.

Where does compliance sit?---That – Australia Division is a different division than the Wealth division. It’s separate from – from Wealth. So I’m assuming it is the risk and compliance teams that sit within the – in the sort of Australia banking – retail banking business.

But within the Wealth business?---No, this is separate.

Outside of the Wealth business?---That’s correct, yes.

Okay. You don’t know whether it’s a presentation to Wealth or to somebody else?---No, I – I don’t, sorry.

If we go to page .8482. We see what Risk thought was the nature of the miss-selling risk. And you see what’s said there:

The key risk that the sale of Smart Choice Super presents is that customers switch their superannuation without understanding the potential consequences and end up with a less suitable product than their existing funds.

?---I do. I see that.

Just so I understand, do you agree or disagree with that statement?---I would agree with that statement.

And then you see there’s a table that begins, and do you see the first box, the top left corner, is Suitability Assessment?---Yes.

And it's explained there:

5 *Staff can only provide general advice about Smart Choice and cannot make any assessment of the product's suitability for the customer or comparisons with their existing funds.*

?---Yes.

10 Continuing:

It is therefore essential that customers understand that staff are not making any recommendation about the product and that they must decide for themselves if it is right for them.

15 ?---That's correct.

And this then, I take it, is the idea of the de-linking statement and the general advice warning that customers will understand the bank isn't actually recommending this product for them, it's just telling them about it?---That's correct.

20

I see. Then if we go over the page to .8483, we see the box Sales Process. And the driver that's identified there is:

25 *There is a potential conflict between the personalised advice A to Z review process and the scripted general advice Smart Choice sales process.*

?---I see that.

30 And there's an explanation of the type of issue that we've been talking about already, which is, if you go through and talk with a customer about their needs, and provide recommendations to a customer about banking products based on their needs, then they're going to think that you're thinking about their needs and making a recommendation to them based on their needs when you start telling them about a super product?---That's – that's right. That's what that says.

35

And then the way in which ANZ proposed to attempt to mitigate that risk was by what we've talked about already – they call it the linking statement, I think – you call it the de-linking statement. The last thing you want is to link it any further?---Yes, it's to de-link from that conversation, from that process.

40

And the general advice warning is the other part - - ?---That's correct. That's right.

And the general advice is actually really supposed to be a statement which is this isn't advice at all, it's just a selling to you of a product?---It's just here are the facts.

45

I tender that document, Commissioner.

THE COMMISSIONER: Before we do that, is the deed of amendment in otherwise?

MR HODGE: No, I tender that document as well.

5

THE COMMISSIONER: The deed of amendment to the services deed between ANZ and OnePath Custodians, 3 August 2012, ANZ.800.778.0001 is exhibit 5.260.

10 **EXHIBIT #5.260 DEED OF AMENDMENT TO THE SERVICES DEED BETWEEN ANZ AND ONEPATH CUSTODIANS DATED 03/08/2012 (ANZ.800.778.0001)**

15 THE COMMISSIONER: The sale of Wealth products by retail distribution, September '13, ASIC.0041.0002.8478 is exhibit 5.261.

20 **EXHIBIT #5.261 SALE OF WEALTH PRODUCTS BY RETAIL DISTRIBUTION, SEPTEMBER '13 (ASIC.0041.0002.8478)**

MR HODGE: Now, I will show you another document. We will see if you've seen this, Mr Pankhurst. This is ANZ.801.096.0002. So this, again, seems to be an internal document prepared, it would seem, by the chief risk officer for presentation to the managing director of distribution, or perhaps the other way around?---It - - -

25

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

30 And you haven't seen the document before?---I saw it in the last couple of days.

I see. In the course of preparing evidence - - -?---In the course of preparing I saw this.

35 And we can see this is a document as at 30 September 2011?---That's correct.

And if we go over the page to .0003. This is a discussion about the use of the retail distribution network in relation to distributing Wealth products?---That's what it appears to be.

40

You probably need to speak up, I'm sorry, Mr Pankhurst?---I'm sorry. That's -- you're right.

And we see about a third of the way down the page:

45

A key strategic pillar for ANZ is to improve its Wealth penetration, distribution of tier 1 products through the Australian branch network and ANZ Direct is a

key component of this strategy. Current proposal is to use a scripted general advice model for tier 1 Wealth products to be distributed by retail distribution.

?---I can see that.

5

Is the Smart Choice Super product a tier 1 Wealth product?---Yes.

10 But it wouldn't have been developed, or at least the development of it wouldn't have been completed by this time. This is 2011. Or you're not sure?---I'm not sure. It may – it may have actually been built before that time. It – it's around that time but it may have been built by that time.

15 And then if we go over the page to – I'm sorry, actually before we do that, we should go back and just note exactly what's being identified as the risk description. You see that section which says:

20 *Risks can be summarised as follows: failure by branch network and ANZ Direct to ensure only scripted general advice is provided to customers in general advice situations. Failure by staff to provide general advice warning to customers and fail to maintain appropriate records of advice and warning. Staff do not follow the correct sales process including the proper utilisation of the A to Z review, and not handing over required documents such as the PDS, FSG or explaining the relevant features.*

25 ?---I see that.

And there's a couple of other risks as well?---I see this, yes.

30 And if we go over the page to .0004, we see the inherent risk rating is described as extreme?---Yes.

And then the residual risk rating, the current residual risk rating is high?---Yes.

35 And then there's an explanation as to what that residual risk rationale is, which is:

It is possible that regular breaches of incidents would be seen by the regulator as "systemic" putting ANZs licence at risk.

40 ?---Would you point – I'm sorry - - -

Do you see in the middle of the page, residual risk rationale:

45 *It is possible that regular breaches of incidents would be seen by the regulator as "systemic" putting ANZs licence at risk.*

?---Yes.

And then there's an explanation of what the current risk controls are, which are said to be:

5 ...limited to detective measures such as mystery shopping, compliance spot-checks and customer surveys.

?---That's correct.

10 And then there's a residual risk rating after treatment where the risk rating will drop to medium. And there's an explanation that the reason for that change is:

The risk analysis and mitigation program for this emerging risk will require ongoing review post initial rollout.

15 ?---That's – that's right.

And there were going to be further controls that were implemented?---That's correct.

20 And do you know whether the further controls were implemented or not?---I'm not completely sure.

In any event, whatever the situation with the controls, there was mystery shopping that was done in relation to the sale of the Smart Choice product - - ?---That's correct.

25 When it was accompanied by the A to Z review?---That is correct.

30 And those mystery shopping explorations identified problems with the sales?---I think what the mystery shopping identified – and I believe that I've got the results in the second witness statement – that there were instances where a small number of customers who had been mystery shopped – or the mystery shopping customers had come through and that there was a small number of customers that had gone through that process and where a de-linking statement had not been read out to them, or the general advice and warning. And then once that was identified, then that was taken up, as I understand it, with that particular staff member and they were retrained and that was taken on.

40 The mystery shopping was checking whether or not the process was all followed?---Yes. As I understand it, the mystery shopping – the person came in, they were effectively being a customer, they were going through the process, and they had a range of criteria that they needed to assess from a compliance perspective.

45 The mystery shopping couldn't tell you whether the ordinary customer who came in actually understood that there was this concrete wall that ANZ was apparently drawing between, on the one hand, or apparently building between, on the one hand, the A to Z review and the selling of bank products, and the selling of superannuation

on the other hand?---I – I don't believe – I think that would be a subjective measure, but no.

And – I tender that document, Commissioner.

5

THE COMMISSIONER: Retail distribution advisory risk, Australia division CRO, 30 September 2011, ANZ.801.096.0002, exhibit 5.262.

10 **EXHIBIT #5.262 RETAIL DISTRIBUTION ADVISORY RISK, AUSTRALIA DIVISION DATED 30/09/2011 (ANZ.801.096.0002)**

15 MR HODGE: Now, I will then show you another document again. I suspect you are going to tell us you haven't seen this. Can we bring up ANZ.801.096.0013. This is another internal presentation in relation to advice and distribution risk. You will see this one is dated July 2011?---I see that.

Have you looked at this document before?---I saw it in the last two days.

20

Okay?---On the preparation.

What I'm interested in is if we go to page .0031. This is setting out an internal account of an engagement with ASIC?---That's how I read it.

25

And it explains in the first point:

Wealth engaged ASIC in 2009 to examine advice proposals to distribute the Online Investment Account in branches.

30

?---That's what it says, correct, yes.

And you don't know whether that occurred or not?---I – I don't - - -

35 You assume it did?---I'm taking the document to - - -

But no one has told you about it?---No. No, they haven't.

And then in the last bullet point:

40

In response to ANZs concerns with SGA - - -

?---Scripted general advice

45 Scripted general advice. Thank you:

...ASIC indicated (1) the ability to provide general advice was not compromised by prior awareness or concurrent completion of a customer fact-find process. The crucial factor was the absence of a personal recommendation as to the suitability of, or to acquire a product.

5

?---I see that.

And what I'm interested in is whether you were aware that ASIC had, at some time in the past, okayed the use of a fact-find process, like the A to Z review, concurrently in relation to the sale of a product?---I – I was not personally aware.

10

All right. I tender that document, Commissioner.

THE COMMISSIONER: Wealth risk mass market Wealth Australian distribution advice and distribution risk, July 2011, ANZ.801.096.0013, exhibit 5.263.

15

EXHIBIT #5.263 WEALTH RISK MASS MARKET WEALTH AUSTRALIAN DISTRIBUTION ADVICE AND DISTRIBUTION RISK, JULY 2011 (ANZ.801.096.0013)

20

MR HODGE: Has there been any consideration given, Mr Pankhurst, to how many, if any, of the customers who signed up and made contributions or rollovers into the Smart Choice product were worse off as a result of doing that rather than sticking with their existing superannuation fund?---I don't believe so.

25

I don't have any further questions for this witness, Commissioner.

THE COMMISSIONER: Thank you. Yes.

30

MR PIKE: No re-examination. Might he be excused, Commissioner?

THE COMMISSIONER: Yes, thank you, Mr Pankhurst, you may step down. You're excused.

35

<THE WITNESS WITHDREW

[10.17 am]

40

MR HODGE: Commissioner, the next witness is Mr Allert from AMP. Perhaps if we could break for five minutes to rearrange.

THE COMMISSIONER: If I come back when, 25 past?

45

MR HODGE: Thank you, Commissioner.

EXHIBIT #5.264 SUMMONS TO MR ALLERT

5 MR HOLLO: Mr Allert, have you prepared four witness statements which address certain topics and questions specified by the Commission?---I have.

Do you have originals of each of those statements with you?---I do.

10 Is the first of those statements dated 25 July 2018 and relates to Rubric 5-06?---Yes, it does.

And it relates to the funds of which NM Superannuation is the trustee?---That's correct.

15 And you've also prepared a supplementary statement to Rubric 5-06 following a further request from the Commissioner. And that statement is dated 15 August 2016?---That's correct.

20 THE COMMISSIONER: '18, I trust. 15 August '18, I trust, rather than '16.

MR HOLLO: '18. I beg your pardon.

25 THE COMMISSIONER: You were ahead of us, Mr Allert, if that was right. Yes, go on.

MR HOLLO: Is the supplementary statement – in the supplementary statement, you also make some corrections to your statement 5-06 and some of the other statements you've made?---Yes, I do.

30 And subject to the corrections made in the supplementary statement, are those statements true and correct?---Yes, they are.

I tender – Mr Commissioner, I tender statement 5-06 and its exhibit.

35 THE COMMISSIONER: Exhibit 5.265, the statement of 25 July '18 in relation to Rubric 5-06.

40 **EXHIBIT #5.265 STATEMENT OF RICHARD ALLERT IN RELATION TO RUBRIC 5-06 DATED 25/07/2018**

MR HOLLO: I also tender the supplementary statement - - -

45 THE COMMISSIONER: Supplementary statement of 15 August '18 - - -

MR HOLLO: - - - of 2018.

THE COMMISSIONER: - - - concerning Rubric 5-06, exhibit 5.266.

5 **EXHIBIT #5.266 SUPPLEMENTARY STATEMENT OF RICHARD ALLERT
CONCERNING RUBRIC 5-06 DATED 15/08/2018**

MR HOLLO: Mr Allert, you've also prepared another statement dated 25 July 2018
which relates to Rubric 5-15?---Yes.

10 It relates to the AMP Retirement Trust of which AMP Superannuation Limited is the
trustee?---Yes.

15 Subject to the corrections in the supplementary statement I referred to a moment ago,
is that statement true and correct?---Yes, it is.

I tender that statement, Mr Commissioner, and its exhibit.

20 THE COMMISSIONER: Exhibit 5.267, the statement of Mr Allert and its exhibits,
25 July '18 concerning Rubric 5-15.

25 **EXHIBIT #5.267 STATEMENT OF MR ALLERT AND ITS EXHIBITS
CONCERNING RUBRIC 5-15 DATED 25/07/2018**

MR HOLLO: The final statement you've prepared, Mr Allert, is dated 1 August
2018. And it relates to Rubric 5-34?---Yes.

30 Yes. And it relates, I take it, to the AMP Superannuation Savings Trust of which
AMP Superannuation Limited is also the trustee?---That's correct.

35 And subject to the corrections in the supplementary statement I referred to earlier, is
that statement true and correct?---Yes, it is.

I tender that statement and its - - -

40 THE COMMISSIONER: Statement of Mr Allert and its exhibits of 1 August '18
concerning Rubric 5-34 is exhibit 5.268.

45 **EXHIBIT #5.268 STATEMENT OF MR ALLERT AND ITS EXHIBITS
CONCERNING RUBRIC 5-34 DATED 01/08/2018**

MR HOLLO: Mr Commissioner, I trust that Mr Allert has his original statements in
the – in the witness box?---I do.

THE COMMISSIONER: Yes. Yes, Mr Hodge.

<CROSS-EXAMINATION BY MR HODGE

[10.30 am]

5

MR HODGE: Thank you, Commissioner. Commissioner, just before we begin, can I just offer a pre-warning, which is I understand there are a lot of documents still being uploaded into the court book, because for whatever reason they have been reproduced this morning and are now being uploaded. So we may find as we're going that some documents don't come up and we will attempt to manage that as best we can. We may – it may become convenient to take an earlier break this morning than we might otherwise do.

15 THE COMMISSIONER: See how we go, Mr Hodge.

MR HODGE: Yes. Thank you, Commissioner.

Mr Allert, I just want to make sure that it's clear what the structure is of the operations of the trustee – I should say trustees for AMP. There are two trustees at the moment. AMP Superannuation Limited and NM Super?---Yes.

And each of those trustees is the trustee of more than one superannuation fund?---That's correct.

25 And the trustees share the same board?---Yes.

And AMP Super is the trustee of the AMP Retirement Trust?---Yes.

30 And that's sometimes or often referred to as ART?---Yes.

And AMP Super is also the trustee of the Superannuation Saving Trust?---Correct.

35 And that's sometimes referred to as SST?---Yes.

And there are many products within the Superannuation Saving Trust?---Yes, there are.

40 Then on top of that AMP Super is also the trustee of an eligible rollover fund?---That's correct.

Now, AMP Super, as we understand it, has another entity that carries out all of its administration. Which entity is that?---AMP Services. But it has – I mean, it's delegated – its functions to other companies within the AMP Group, AMP Life predominantly and AMP Life then delegates to others but AMP Life, AMP Capital, etcetera.

- Let me ask you some questions about our understanding of the AMP Super structure and you tell me if this reflects your understanding. AMP Super has invested the assets of the fund in life – or investment linked life investment policies issued by AMP Life?---Yes.
- 5 And the assets are then attributed by AMP Life into certain statutory funds that it operates?---Yes.
- 10 And then AMP Life contracts with AMP Capital – it might be AMP Capital investors?---AMP Capital Limited, I think.
- In any event, AMP Capital is how it is always referred to, to carry out the investment management for those funds?---Yes, that’s correct.
- 15 And you referred to AMP Services. AMP Services contracts with AMP Super to provide certain services to AMP Super?---I’ve set out the structure but AMP Life might actually contract AMP Services to do things.
- 20 I see. It might. I understand what you’re saying. It might well be that it’s actually AMP Life - - -?---Yes.
- - - who contracts with AMP Services?---Yes.
- 25 Rather than AMP Super contracting with AMP Services?---Correct.
- And what that reflects is effectively the entire administration and operation of the trust is handed over to AMP Life by AMP Super?---Effectively, yes.
- 30 And it’s AMP Life that prepares and issues the product disclosure statements on behalf of AMP Super?---Yes.
- And, in fact, I think when you actually look at who the relevant contact person is, the contact entity at the end of the PDS is it’s AMP Life rather than AMP Super?---Yes, that’s right.
- 35 So that’s AMP Super. And we will come back to that. Now, NM Super operates in a different way?---Yes, slightly different. Slightly differently but effectively the outcome is the same.
- 40 By the outcome is the same, you mean there’s a related party member of the Group that takes over full responsibility for dealing with the operation and management of the trust?---Effectively, yes.
- 45 And in the case of NM Super, that related party entity is NMMT?---Correct.

- And I think we may have skipped a step. We may not have talked about how many super funds NM Super is the trustee for. It is the trustee for the Wealth Personal Superannuation and Pension Fund?---Yes.
- 5 And that's often just referred to as Wealth?---Yes.
- And within Wealth, again, there are many products?---Yes.
- 10 And, for example, Wealth is the superannuation fund that contains products like North?---Yes.
- And it also contains products like PortfolioCare or you're not sure?---I'm not sure of PortfolioCare.
- 15 Okay. And some of the products are still open and some of the products are closed?---Yes.
- And then - - -?---Actually, I'm not sure whether the Wealth products have closed but in some of the funds that NM Super is the trustee of there are some closed funds, yes.
- 20 I think closed products rather than closed funds?---I beg your pardon, closed products.
- Is that right?---No, there's some closed funds under one of the super - - -
- 25 I wonder if you're thinking of – was there a fund called the Retirement Plan?---Yes. That has now been transferred into Wealth.
- 30 Yes. There has been a successor fund transfer where that fund, the retirement plan, has recently been transferred into the Wealth fund?---Correct.
- Is that what you mean by a closed fund?---No. I mean that there's some closed funds in the retirement fund that's under NM Super.
- 35 All right. We will see if we're able to identify what that is. There's another fund of which NM Super is the trustee which is the Super Directions Fund?---Yes. And that's the one that has closed products in it.
- 40 Yes. I think – I think what you will find is that both Super Directions Fund and Wealth has – have closed products within them?---I could accept that, yes.
- And Super Directions Fund has, for example, a product called Super Directions for Business?---Yes.
- 45 And Super Directions Personal?---Yes.

And then there's another fund, which we think has all closed products, which is the National Mutual Retirement Fund?---Yes.

5 And then there's another fund we think also has all closed products which is the National Mutual Pro Super Fund?---Yes. The Pro Super Fund just has life policies.

Yes. And they're closed, I think, too?---Yes.

10 Is that right?---Yes.

Okay. And so NM Super for all of its super funds has retained NMMT to carry out most of the management in relation to those funds?---It has appointed NMMT effectively as its agent which in turn has appointed AMP Life.

15 I see. NMMT, as you understand it, has appointed AMP Life to do certain things as well?---Yes.

And you referred to the agency agreement. I wonder if it will help if we bring that up. This is, I think, an exhibit. From memory it's tab 10 to your statement 5-06.

20 Yes. It's tab 10 to your statement 5-06. It's AMP.6000.0125.0100.

MR HOLLO: I am not sure whether Mr Allert is clear whether he should be looking at the document?---It has now come up on -- well the agency agreement cover has come up on my screen.

25 MR HODGE: Yes. And you should feel free -- if you've got your statement there with you, Mr Allert - - -

30 THE COMMISSIONER: He has the statement but not the exhibits, I assume. The exhibits are trolley loads.

MR HODGE: I see. There are four volumes of exhibits for just one statement?---Thank you.

35 So this is the agency agreement, Mr Allert?---Yes.

And you've exhibited it to your statement?---Yes.

40 Is it a document that you would have reviewed in the course of your chairmanship before coming to give evidence?---No.

Okay. And then we see that this is dated 30 June 2005?---Yes.

45 And if we go to page .0106. We see this is a continuation of the recitals and recital D is:

This agreement is intended to govern the relationship between the Principal --

Who is NM Super:

5 ... and NMMT as it relates to the services set out in clause 3 following the retirement of NMMT and the appointment of the principal as trustee of the NMMT funds.

?---Yes, I see that.

10 Now, this might be before your time, but do you know whether NMMT was originally the trustee of the superannuation funds and was then replaced by NM Super?---I think that was the case, yes.

And then if we go to page .0112?---Yes, I am there.

15 I am just waiting for it to come up. You see there's clause 3 at the bottom of the page which is Services?---Yes.

And the services to be provided by NMMT include:

20 (a) performing on behalf of the principal all obligations imposed on the principal and exercising on behalf of the principal any of the principal's rights, powers or discretions in connection with a relevant agreement or the funds as contemplated under a relevant agreement.

25 ?---Yes, I see that.

And there's then various other things that the – that NMMT is inclusively appointed to do, but if we go over to page .0114, we see subparagraph (e):

30 Operating as agent of the principal, bank accounts as required to facilitate the collection of funds to which the principal is entitled and the disbursement of funds to discharge liabilities of the principal under relevant agreements or as trustee of a fund.

35 ?---Yes, I see that.

And so as we understand it, the effect of this is that everything, from the collection of money through to the administration of the trusts, through to the decisions as to entry into investment management agreements, is handed over to NMMT?---Yes.

40

And NMMTs reimbursement is then set out on page .0135. Which is in 1.1:

45 All fees and charges specified in the offer documents and application forms for the funds will be collected by NMMT from the members' cash accounts.

And then in 1.2:

NMMT will pay the fees due to be paid under the relevant agreements directly to the service providers of the funds.

?---That's what it says, yes.

5

And then 1.3:

NMMT may retain the remaining collected fees as payment for its services.

10 ?---Yes, that's what it says.

So that the effect is, as we understand it, NMMT collects all of the money paid by members of the fund, pays whatever – for whatever services need to be paid for to operate the fund, and then retains the balance?---Yes.

15

And, in practice, that is how it all operates as well?---I think it is, yes. But, I mean, in my mind, as I said earlier, AMP Life is carrying out the obligations. NMMT must engage AMP Life to do its functions, but channelled through NMMT, I expect.

20 I see. And in terms of what role that leaves the trustee, how do you see that?---The role of the trustee?

25 Yes. After it has subcontracted or appointed as agent NMMT to carry out everything, if it's NM Super, or handed over all of its investments to AMP Life and entrusted it with administration in the case of AMP Super?---It's demonstrative of what actually happens.

I see. So it is then dependent upon reporting that comes back to it?---Correct.

30 About what has occurred?---Yes.

And as we understand it, if we're to talk about just the trustee, there's an office of the trustee?---Yes.

35 And Ms Sansom, who is going to give evidence after you, is the head of that office?---She is still the head.

Or was the head of the office?---She is the head of the office.

40 Is she – she is still the head of the office. And how many other employees are there within the office of the trustee?---Approximately 10.

I see. And they all report to Ms Sansom?---Yes.

45 And are they all full-time devoted only to the work of the office of the trustee?---Yes.

Has that been an increase in the number of employees since you've been on the board?---It could have been. I'm – I didn't ask when I was appointed how many and I haven't asked – I understand it's approximately 10 now but it would be added to as the need arises.

5

And then there's the board of the trustee of which there are three members?---Yes.

You're looking at the moment to appoint more members to the board?---Yes.

10 And you are the chairman of the board, as we've already spoken about?---Yes, I am.

And then there's two other members who have been there each for about a similar period of time to the time you've been on the board?---No, Darryl Mackay has been there for – well, he was back in as an executive – I have set this out in my witness statement – he was an executive. He became a non-executive director three or four or five years ago. Louise Dudley, who is a current director, came on the board in June 2016 when I became the chairman.

15

And you were appointed to the board in 2015?---December 2015.

20

Now, I wanted to ask you about the approval of payments that are made to AMP Life and NMMT. Can we bring up AMP .6000.0128.7106. We will discover in a moment, Commissioner, just how badly this is going to go?---Thank you.

25 It doesn't appear at the moment that we have electronic copies available. You will see, Mr Allert – you have to – there's the same front page on the front of every board pack?---Yes.

Where it sets out AMPs - - -?---Yes.

30

I think it's called Owing Our Culture. And then if you turn over to the second page which is .7108, we can see this is the pack for a meeting of the board to be held in August of 2017?---Yes.

35 How often does the board – how often do the concurrent meetings of the boards of AMP Super and NM Super occur?---It was planned to have five board meetings a year and other board meetings as required. This year, of course, we've had a lot more board meetings.

40 A lot more issues have presented themselves this year so you've had to have more meetings?---Yes.

And if we go to page .7209. That should have a numeral 104 on the bottom of the page, Mr Allert?---Sorry, what number page?

45

It should be page 104 on the bottom of the page, Mr Allert?---Yes.

Now, this is a paper to the boards of the trustees dated 1 August 2017?---Yes.

And it's titled Review of Fee Arrangements?---Yes.

5 And it's prepared by Mr O'Farrell, the director of finance operations?---Yes.

Where does Mr O'Farrell sit or where does finance operations sit?---Within AMP Life.

10 And you will see the recommendation is that the boards of AMP Super and NM Super note the existing fee arrangements?---Yes, I see that.

And that reflects the way in which these agreements operate, which is the trustee doesn't have to approve anything or review anything before payments are made?---Well, we – we have a - - -

15

MR HOLLO: Excuse me, what payments? It's a very general question.

MR HODGE: That's fine. We will go through the payments. This concerns the payments that AMP Life receives from the superannuation funds of which AMP Super is the trustee and the payments that NMMT takes from the super funds of which NM Super is the trustee?---Yes.

20

And it also concerns payments that are made with respect to service fees?---I just need to read the paper.

25

All right?---Yes.

Please do?---Yes. Thank you.

30

You've read the paper now?---Yes, I have.

Thank you. You presumably would have read it at the time last year?---Indeed.

35 All right. And to go back to the question I asked you a moment ago, this concerns the payments received by AMP Life in respect of the superannuation funds operated by – I'm sorry, not operated by, of which AMP Super is the trustee?---Yes.

40 And it also concerns the payments received by NMMT in respect of the superannuation funds of which NM Super is the trustee?---Yes.

And it also concerns payments that are made in respect of service fees to AMP Services?---Yes.

45 And it also concerns payments that are made back by AMP Life to AMP Super and NM Super?---As the trustee, yes.

And what it explains or what you're asked to note is that in respect of AMP Super, it's – there are – there's no explanation or no identification for you of what fees are received by AMP Life in respect of the operation of the AMP Super super funds?---Sorry, could you say that again?

5

Yes. If you have a look at the paper - - -?---Yes.

- - - you see there's an identification of what fees AMP Super receives from AMP Life. Do you see that at the bottom of page 104?---Yes, it says that.

10

And there's an explanation of what service fees are paid to AMP Services?---Yes.

But there's no explanation of what fees AMP Life takes from the superannuation funds of which AMP Super is the trustee?---Not in – not there there's not, no.

15

No. Do you know what the quantum of fees is that AMP Life takes from the superannuation funds of which AMP Super is the trustee?---Well, I think later on page 107 - - -

20

Yes?--- - - - it talks about platform fee revenue received from Wealth and TRP.

Yes. Now, this is – I can see why this might have led to an error. That is in relation to Wealth and The Retirement Plan. That's what TRP is?---Yes.

25

Wealth and The Retirement Plan are the superannuation funds operated by NM Super?---Yes.

And these are the fees received by NMMT in relation to the superannuation funds that NM Super operates?---Are you saying that this paper is all about NMMT's fees?

30

No, no. The first part you see – the first part of the paper is about the fees paid in respect of AMP Super. And the second part of the paper is about the fees paid in respect of NM Super?---Sorry, yes, on page 105, yes.

35

Yes. So if we just step through it, what you're told, in summary, is:

AMP Life, AMP Services and NMMT retain the margins of the trustee's superannuation business in exchange for providing the trustees with the financial, technical and administrative support they require to provide products and services to its members.

40

Do you see that? It's under the heading Summary?---On which page?

On page 104?---Yes. Yes.

45

And then you have a heading, which is ASL?---Yes.

And ASL is AMP Super?---Yes.

And then there's a heading which is Trustee Fee Revenue?---Yes.

5 And it's explained that is the amount that AMP Life pays to AMP Super?---Yes.

And that calculation is an amount of \$2.17 per member?---Yes.

10 And then there's an explanation of the service fee paid by AMP Super to AMP Services?---Yes.

And that fee is calculated as \$1.96 per member?---Per annum, yes.

15 And then if you go over the page, you see a table that sets out how those figures work out, which is that AMP Life in 2016 paid \$6.186 million to AMP Super?---Yes.

And then AMP Super paid \$5.6 million to AMP Services?---Yes.

20 And those payments are all just the effect of the two relevant commercial agreements in place?---Yes.

I think – I say two relevant. I think there might actually be one relevant agreement, which is the Master Outsourcing Agreement?---Yes.

25 And so the consequence is you don't receive information about – or you didn't receive information in this paper as to how much money AMP Life is taking out of the AMP Super funds?---No.

30 And it doesn't really matter because the administration of those funds is left to them?---Correct.

And then for NM Super, there's another heading which is halfway down the page?---Yes.

35 And it then explains that there's, again, some trustee fee revenue, which is that AMP Life pays a million dollars to NM Super to cover the cost of being the trustee?---Yes.

And then there's a reference to platform fee revenues?---Yes.

40 And the platform fee revenues are all of the fees charged in respect of the Wealth Personal Superannuation and Pension Fund and The Retirement Plan?---Yes.

And it explains the basis of that calculation is the product disclosure statement?---Yes.

45 Whatever is disclosed to the member is the fee they're going to charge – going to be charged, all of that money is going to go to NMMT?---Yes.

And then there are administration and custodial fee expenses which are fees that NM Super pays to NMMT and also to another company called NMLA which is the National Mutual Life Association of Australasia Limited?---Yes, that's what it says.

5 Then if you go over the page to page 106, there's then a statement or an explanation of another fee that's paid by NM Super which is a fixed fee of \$1.32 million paid to AMP Services?---Yes. To provide trustee services, yes.

And then it's said – and this, as we understand it, is just about NM Super:

10

All the fee arrangements referred to above, with the exception of the platform fees, are not subject to schedule reviews and are also not legally documented and are based upon existing practice.

15 ?---Yes, that's what it says.

And is that your understanding of what the situation was?---Yes, that's what I was advised.

20 And as the trustee, or as the chairman of the trustee, did that seem strange to you, that the trustee would be paying out money to related companies without any documented arrangement?---I – well, I can't say that I focused on that particular sentence but I understood that the arrangements for payment of fees between the trustee and the service provider were documented.

25

I'm sorry, you understood what?---I understood that those arrangements were documented.

30 I see. So when it said they weren't legally documented, did you ask any questions about that?---I can't remember whether I did or not, but I'm – reading it now, I'm surprised that it says that.

And the amount of money that is described as the platform fees is, in 2016, \$373.7 million?---Yes.

35

And all of those fees go to NMMT?---Yes.

All right. I tender that document, Commissioner.

40 THE COMMISSIONER: Is it the email or the whole of the board pack, Mr Hodge?

MR HODGE: Commissioner, there's another part of that board pack that we will go to later so I might tender the entirety of it.

45 THE COMMISSIONER: Yes. Board pack of AMP Superannuation Limited and NM Superannuation Proprietary Limited, board meeting to be held on 16 August 2017, AMP.6000.0128.7106 becomes exhibit 5.269.

**EXHIBIT #5.269 BOARD PACK OF AMP SUPERANNUATION LIMITED
AND NM SUPERANNUATION PROPRIETARY LIMITED, BOARD
MEETING TO BE HELD ON 16 AUGUST 2017 (AMP.6000.0128.7106)**

5

MR HODGE: Thank you, Commissioner.

Now, Mr Allert, you referred to before the way in which reporting happens from other parts of the business back into the trustee?---Yes.

10

And I think what you were explaining was that is the only way that the trustee can know what is going on with the administration of the trust funds by the other AMP entities?---Well, the trust – yes, I mean, we have all sorts of presentations to the board in relation to what’s happening. Is that what you’re referring to?

15

Perhaps if we take it in a couple of steps. At each of the five board meetings, people come from different – I apologise, Commissioner, that was my Apple watch getting excited. At each of the five scheduled board meetings of the trustees, there are people who come from different parts of the AMP business and give presentations to the board of the trustees?---Yes.

20

And they will cover various topics, either for noting or sometimes for approval by the board?---Yes.

25

And there’s also something called the BMM framework?---Yes.

The reporting that occurs at the board meetings, is that pursuant to the BMM framework or is that separate from the BMM framework?---No, the – we have a report on the BMM framework quarterly.

30

And the quarterly BMM framework report is to assist the trustee to understand what risks or issues there are that will arise in relation to the business?---Well, we have an audit and risk report as well as the – as the BMM report, yes.

35

Perhaps if you explain to the Commissioner, what is the purpose that the BMM report serves?---The BMM is actually – what it means is a business monitoring model and it monitors the services that are contracted to be provided by AMP Life to the trustees. Or AMP Life and NMMT.

40

And is the way that it works that there are certain identified exceptions - - -?---Yes.

- - - within the framework?---I mean there are certain standards that are set and if there are any exceptions to that, they are the subject of a report, and we have the practice of if there is an exception, whomever is responsible for that exception, that part of the business comes to the board meeting and explains what has happened and what they’re doing about it.

45

And so the exception might, for example, be that over a 36-month period, a particular investment had underperformed its benchmark?---I don't think the business monitoring model has performance criteria in relation to particular investments.

5 No, no. There are performance – for every investment, somebody has set a performance objective?---Yes.

Presumably AMP Life has set the performance objective?---Actually what's now called the GIC sets the performance objectives.

10

The GIC is - - -?---The Group Investment Committee.

But that's a committee within the AMP business rather than part of the trustee?---Yes.

15

And - - -?---Although the trustee, we are represented on – we have an observer on that in Rachel.

Does Ms Sansom go and observe that or is it - - -?---Yes.

20

Ms Sansom?---Or sometimes it might be another person within trustee services.

Okay. And the GIC will set whatever the performance targets are for all sorts of investments?---Yes.

25

And will it set the targets for particular superannuation products?---Yes.

So, for example, the CPI plus target for the balanced MySuper product will be set by the GIC?---Or approved by the GIC, yes.

30

Approved by the GIC. And then that will ultimately, you would expect, be reported back to the trustee about?---Yes, if there was some issues about that, yes.

35

Would you expect that if there was – you wouldn't expect it just as a matter of course to be reported back?---If there – it depends on the – I mean, there's lots and lots of products. Are you talking about a singular product?

Yes, for any changes to the CPI - - -?---If there was any significant change it would be reported back to us.

40

All right. And if a product fails consistently to meet the performance target, is that something that, as you understand it, gets reported back to the board under the BMM framework?---Not under the BMM framework, no.

45 But it does get reported back to the board?---Yes, I would expect it would be.

Perhaps to assist – look, we’ve got that document that we’ve entirely finished with. Could we bring up – that’s unfair. We’re going to go back to a part of it later. Can we bring up AMP.6000.0151.7160. Do you have a copy of that document, Commissioner?

5

THE COMMISSIONER: No.

MR HODGE: We’re handing it up.

10 THE COMMISSIONER: Can I get some indication of time on target for this, because it’s undesirable that all this should go on as private little converse between three of us, I think.

MR HODGE: Yes, Commissioner. Can I check - - -

15

THE COMMISSIONER: I know there have been hurdles. We won’t pursue those.

MR HODGE: We have this document now.

20 THE COMMISSIONER: The target has been arrived at on time. But if at some point it looks as though stopping for 10 minutes will get the documents into a state where we can go through more smoothly, then it will be more efficient in the long run, I think, if we do that, rather than live hand to mouth, which I rather suspect is happening at the moment. There are a few people calm on top and paddling very fast
25 underneath, I think.

MR HODGE: Thank you, Commissioner.

30 Now, Mr Allert, this is the quarterly investment management report that’s provided to the trustees by the chair of the AMP Investment Committee?---Yes.

And if you go to page 3 of that document, which is .7162?---Yes.

So this is the exceptions criteria?---Yes.

35

And I’m not sure whether I misunderstood what you were saying before. Was the point you were making that this exceptions criteria for investment performance is not something that falls under the ambit of the BMM?---Well, the BMM is – it covers a whole lot of things but there’s a specific report on the BMM and we have other
40 reports in addition to that, and this is one of them.

Yes. This is an additional report - - -?---Yes.

- - - that comes to the board?---But, I mean, you could say it’s all about - - -

45

MR HOLLO: I’m not sure that Mr Allert has accepted that this document comes to the board.

MR HODGE: All right. Does the board not receive the quarterly investment management report?---I don't think we do receive it as such. I think it goes to the trustee services.

5 I see?---And if there's an issue, then trustee services would bring those issues to us. I was reading this and thinking I don't know that I've actually seen this actually specifically before but I - - -

10 You're not sure?---No, I'm not sure. I would need to look at the board papers to see if this was tabled at the board but we would not always get this report. It goes to the Group Investment Committee, it goes to trustee services.

Again, Group Investment Committee is a committee - - -?---Yes.

15 - - - outside of the trustee?---Yes. So this is coming from the Group Investment Committee to - it says the trustee quarterly investment management report but I expect it goes, particularly in the first instance, to trustee services.

20 Yes. If we - again, if you just look, though, on page .7162. So this is setting out the exceptions criteria?---Yes.

And there's three steps in the criteria which we will come to in a moment, but do you see at the bottom of the page it says:

25 *If an exception is triggered, trustee management will inform the chair, AMP Investment Committee and advise the reason for the exception rating.*

?---Yes.

30 And then it says:

35 *The board will be provided with the current quarterly investment management report and the chair, AMP Investment Committee will attend the next trustee board meeting and explain the circumstances of the event causing the exception rating and the remedy proposed.*

?---Yes.

40 And I think I understand the point you're making, which is unless an exception was triggered, then you wouldn't expect this report to be provided to the board?---Correct.

45 So this report setting out the quarterly investment performance, would go to the office of the trustee but not need to be referred up to the board unless an exception was triggered?---Yes.

And the exceptions have these three criteria?---Yes.

Insofar as we're concerned with underperformance, we see that the second dot point is identification:

5 *Significant underperformance against peers/benchmarks over rolling 36 month period.*

?---Yes.

10 And then if it passes through the identification filter, then there's a second filter which is:

Further investigation is triggered where –

15 And then there's certain things that are identified there?---Yes.

And then if it passes through that filter, then the third filter, which is where:

An exceptions report will be issued –

20 Is relevantly –

if an investment option remains under investigation or on the exceptions list for a period of eight or more quarters.

25 ?---Yes.

So it would seem as if it would be necessary for an investment to underperform for five years before it would be reported to the board. Is that right?---No, I couldn't accept that.

30

I'm just wondering – you see filter 1:

Significant underperformance against peers/benchmarks over rolling 36 month period.

35

?---Yes.

So it has to underperform over a 36 month period before it passes through the first filter?---Yes, that's what that says.

40

And it has to significantly underperform?---Yes.

And then there's the second stage, and then the third stage, which is where the exception report will be issued, is where the:

45

Investment option remains under investigation or on the exceptions list for a period of eight or more quarters.

?---Yes.

5 So what we're just trying to understand is, is it – is it possible for an exceptions report to come to the board about investment performance any earlier than where the underperformance has occurred over a five-year period.

THE COMMISSIONER: Yes, Mr Hollo.

10 MR HOLLO: The question is a little unfair, and I don't want to explain it because comments have been made earlier in the hearing block about insinuating answers for a witness and I'm very conscious of that.

THE COMMISSIONER: Well, do you want Mr Allert to leave the room?

15 MR HOLLO: I won't need to do that. All I want to say is that it's clear from this document that there are other ways in which that might happen. And Mr - - -

20 THE COMMISSIONER: Mr Allert is, I think, if I may suggest this, an experienced director who is not demonstrating any inability to understand what he is being asked, and he is not demonstrating, I think, any inability to deal with what he is asked. But is there - - -

MR HOLLO: Thank you.

25 THE COMMISSIONER: - - - something more than that, Mr Hollo?

MR HOLLO: I'm just concerned about the rolled-up way in which it was put, and I'm concerned that the witness has said that he hasn't – he may not have seen this document. It doesn't go to the board.

30

THE COMMISSIONER: Yes. Go on, Mr Hodge.

MR HODGE: Thank you, Commissioner.

35 I will ask my question again. Is it possible for an exceptions report to come to the board about investment performance any earlier than where the underperformance has occurred over a five-year period?---Yes, it is possible.

40 And in what circumstances would that happen?---I – if there was something that was really bothering the Group Investment Committee and relaying it to the trustee services or was bothering our trustee services representative on the GIC, they would alert the board to that fact.

45 And that's something that you would expect to occur outside of this exceptions framework - - -?---Yes.

- - - is that right?---Yes.

So I am getting a groan from my friend. He can give whatever evidence he wants to give later, I think. In relation to your evidence, Mr Allert - - -

5 MR HOLLO: I am not sure that's quite fair. I am not giving evidence.

THE COMMISSIONER: Well, just let's settle down and get on. Let's hear what the witness has to say.

10 MR HODGE: Mr Allert, do you review the exceptions criteria?---Yes.

These exceptions criteria will be set by the board, wouldn't they?---I can't remember setting this one. I mean, you're pointing out to me that it could take five years if it was strictly followed here and I've never had that consciousness.

15 Have you had exceptions reports about underperformance, to your recollection, provided to the board?---Yes.

And in what circumstances were they provided that you can recall?---Well, they were – they would be provided where they thought that was a significant issue.

20 What are the products of the superannuation funds that you can recall have underperformed?---Well, some – some have underperformed against competitive products or I've had many discussions with AMP Capital where I've been concerned that there has been underperformance in some products where our members could read – read the newspaper and see comparisons of funds that they often see. So I've
25 asked questions about how that occurs and what they're doing about it.

I just want to try to take this in pieces. Your – you seem to be referring to a situation where you have read the newspaper and identified that an AMP product is
30 underperforming compared to a comparative peer product. Is that right?---I'm just giving that as one example of how it could happen.

Yes?---Yes.

35 And - - ?---But other examples would be trustee services, as I mentioned earlier, trustee services would think that there was an issue and they would bring that to the board's attention.

And can you recall that having happened this year?---Yes.

40 And in relation to what product did that happen?---In relation to cash products.

And I tender this document, Commissioner.

45 THE COMMISSIONER: Trustee quarterly investment management report, dated 12 May '16, AMP.6000.0151.7160, exhibit 5.270.

**EXHIBIT #5.270 TRUSTEE QUARTERLY INVESTMENT MANAGEMENT
REPORT DATED 12/05/2016 (AMP.6000.0151.7160)**

5 THE WITNESS: Could I just clarify what I just said. I said in relation to cash products.

MR HODGE: Yes.?---What I should have said is that in relation to products that had a cash element.

10 Yes. Just so we're clear on what you mean, a product might have – or might be comprised of different investments?---Yes, different asset allocations. It could be, for example, 70 per cent Australian equities, 20 per cent international equities, 10 per cent cash.

15 And an issue was raised in relation to the performance of cash investments?---The cash component, yes.

20 That's right. Somebody could, for example, be 100 per cent invested in cash?---It would be rare but they could be, yes.

We've got some member statements so I will show you those in a moment. And there was an issue that was raised with the board as to the underperformance of cash?---Yes.

25 And what do you recall the issue was?---That there had been negative returns for – some members had had negative returns for the cash element of their product.

30 And was that specifically in relation to the Super Directions Fund?---Well, it included the Super Directions Fund, yes.

Was Super Directions Fund the fund in which cash performed worse – worse?---Yes.

35 That was the fund - - -?---Yes, I understand. Yes.

Yes. I think I understand your point, which is you're not trying to suggest that cash performed well in the other funds that are operated?---Correct, yes.

40 It's just that it performed worse - - -?---Well, that's the one that has had the focus.

Yes?---Yes.

45 Because it has managed to generate negative returns on cash for three years?---In some instances that may be right, yes.

And - - -?---On the cash element, I continue to – of a product.

Yes. If a member has an investment in cash, then that part that is invested in cash has generated a negative return?---Yes.

And that was brought to the board's attention in May?---Yes.

5 If we bring up AMP.6000.0128.8719. So these are the board papers - - -?---Thank you.

- - - from May of 2018?---Yes.

10 And this meeting occurred on 14 May 2018?---Yes.

And if we go to the page .8758?---Yes. Yes, I'm there, sorry.

15 That's all right, Mr Allert. We're just waiting for the system to catch up with you?---I beg your pardon.

You are racing ahead of us. This, you will see, is a memorandum to the directors – this is of NM Super, that is, the directors of NM Super rather than AMP Super?---Yes.

20 And it's raising an issue for the board of the trustee to note?---Yes.

And it should note an incident, and the incident has two components. The first is the negative net returns for members in the Super Directions Cash Management Trust investment options over the last three years?---Yes.

25 And:

30 *...gaps identified in the current controls framework to effectively monitor NM Super's compliance obligations, specifically in meeting prudential standard SPS 530 relating to performance reporting of investment options.*

Do you see that?---I am aware that happened but can you point out where it is on this - - -

35 It's just on the top of the page under the heading Recommendation?---I beg your pardon. Yes.

40 And what triggered this was that APRA sent a request for information to AMP on 1 March 2018?---Yes.

And that was because APRA was conducting – perhaps is conducting – a targeted review of cash options?---Yes.

45 And it had identified the Super Direction's Cash Management Trust investment option as something in which it sought information?---Yes.

And then that then led to this reporting to the board?---Yes.

Now, that seems like it's something – a reporting that's occurring separately from the exceptions framework?---Yes.

5

Do you draw any conclusions about the adequacy of the exceptions framework if the first time that you found out that the cash management trust in Super Directions had net negative returns for three years was as a result of an inquiry from APRA?---I can acknowledge that the reporting – we weren't asking for reports on negative cash returns, obviously. So the reporting wasn't instructed to report on negative cash returns or negative returns on other products but it has been now.

10

That is, there has now been a change - - -?---Yes.

15

- - - and the board will have to be told - - -?---Yes.

- - - if there are negative net returns?---Yes.

20

Do you know why there are negative net returns in cash?---Yes.

25

And what are the reasons?---Well, the reasons can be complex, but there's a fee charged on the – in some cases, it's a fee charged to a product which doesn't differentiate between the asset allocation of that product. And so if a product has \$100 and \$70 of it is Australian equities and 20 is international equities and 10 per cent is cash, the same fee is charged over that whole amount. In other aspects, if there's just cash only, then there's an administration fee that absorbed the interest return on that product.

30

I see. Now, you offered your understanding as involving two issues. One was where the member's investment was split between different investment options and one of them was cash, and there was the same investment management fee charged across all investment options?---Yes.

35

And the second was that where a member was wholly invested in cash, it was possible that their administration fee would exceed the return on cash?---Yes.

Can I show you some member statements. Can we bring up AMP.6000 – I'm sorry, Commissioner, I tender that document.

40

THE COMMISSIONER: ASL and NM Super board papers, May '18, AMP.6000.0128.8719 exhibit 5.271.

45

**EXHIBIT #5.271 ASL AND NM SUPER BOARD PAPERS, MAY '18
(AMP.6000.0128.8719)**

MR HODGE: Can we bring up AMP.6000.0251.4428. This is a member statement from April of 2015?---Yes, 11 April, yes.

5 I will just check this. The month and year of birth has been redacted but I understand that's not actually subject to a non-publication direction. So I can tell you the month and year of birth is May 1960?---Right.

10 And you will see this member statement is for the period – or the year ending 28 February 2015?---Yes.

Members don't all have the same statement period, as we understand it?---No, they don't.

15 And if we go over the page to .4429. You see this member is 100 per cent invested in cash?---Yes.

And the rate of return for this year is .47 per cent?---Yes.

20 And if we go over the page to page .4431, we see at the top of the page the rebates, direct fees, and other management costs?---Yes.

And the direct fees are \$76.85. The rebates are \$20.10?---Yes.

25 And the other management costs are \$1,666.72?---Yes.

And if we then go back a page to page .4430?---Would it be possible for me to have this as one complete document, please? Thank you. Yes.

30 If we go back a page to page 4430, we see the investment return is \$381.59?---Sorry, this is on page 430? Yes, I beg your pardon, yes, I see it.

35 Now, we're just trying to understand. Does that mean, as you – and you may not be able to help us – that the investment return on 100 per cent cash is \$381.59 but the management costs are \$1,666.72?---Yes, that – the investment return would be after the – after those fees.

I see. You think the investment return is after those fees. That's how – that's ultimately how you arrive at the .47 per cent. Is that right?---Yes, that's – yes.

40 All right?---The investment return of \$381, which would be the .47, would be after the interest earned on the deposit, less the fees that were taken, yes.

All right. I tender that statement, Commissioner.

45 THE COMMISSIONER: Member statement 11 April 2015 Super Directions for Business for year ended 28 February '15, AMP.6000.0251.4428, exhibit 5.272.

**EXHIBIT #5.272 MEMBER STATEMENT SUPER DIRECTIONS FOR
BUSINESS FOR YEAR ENDED 28 FEBRUARY '15 DATED 11/04/2015
(AMP.6000.0251.4428)**

5

MR HODGE: Now, this person remains a member or a member of the - - -

THE COMMISSIONER: I just slipped three sessions ago. It is 5.272. I said 2.272,
if only. 5.272, Mr Hodge. Yes.

10

MR HODGE: Thank you, Commissioner.

This member remained in the AMP Superannuation fund. And if we can bring up
AMP.6000.0251.4405. So this – in your version it's redacted, but you can

15

- - -?---Can I ask for the full – thanks.

Yes, that's being handed over to you?---Thank you.

You will be able to see, Mr Allert, that's the same person?---Yes.

20

This is now three years later?---Yes.

And if you go over to page 2, which is .4406?---Yes.

25

This is where we see this person who is 100 per cent invested in cash, now has a net
investment option rate of return of negative .39 per cent?---Yes.

And does the net investment option rate of return factor in the administration
fee?---Yes.

30

I see. If we go over the page to page .4409?---Yes.

We see the investment fees on this 100 per cent investment in cash are
\$786.22?---Yes.

35

And the administration fees are \$1,202.83?---Yes.

And I think I understand your point to be that if we then go to page .4411
- - -?---Yes.

40

- - - that's showing a net investment earnings during the period of \$451.12?---Yes, it
does. That's a negative return.

Your point is that's the net negative return of - - -?---Correct.

45

- - - \$451?---Yes, yes.

And that is after the investment fees and after the administration fees?---Yes.

All right. I tender that document, Commissioner.

5 THE COMMISSIONER: Member statement, 8 June '18, Super Directions for Business for year ended 28 February '18, AMP.6000.0251.4405, exhibit 5.273.

10 **EXHIBIT #5.273 MEMBER STATEMENT, SUPER DIRECTIONS FOR BUSINESS FOR YEAR ENDED 28 FEBRUARY '18 DATED 08/06/2018 (AMP.6000.0251.4405)**

15 MR HODGE: I wonder whether that's right. In any event, your point is they end up with a net negative return because of the sum of both the investment management fee and the administration fee that they get charged on 100 per cent cash?---Yes.

20 And have you made any inquiries as to why it is that a member invested in 100 per cent cash is paying fees that are greater than the gross return?---Yes.

And what is the reason?---I've made inquiries about how this could all happen, and obviously so has AMP Life and the outcome of that is that the administration fees have been reduced to 50 basis points.

25 Has that already happened?---It's happening.

That's something that has been taken to the board. Is that right?---Yes.

30 And you are saying it's under consideration at the moment but you anticipate it will occur?---I am.

And the consequence of the administration fees are decreased by 50 basis points?---No, to 50 basis points.

35 By 250 basis points?---No, no. T-o.

THE COMMISSIONER: Reduced to.

40 MR HODGE: Reduced to 50 basis points?---Yes, yes.

And is that just the administration fee - - -?---Yes.

- - - or is that also the investment management fee?---No, it's the administration fee.

45 All right. So the administration fee at the moment is about 100 basis points?---It could be in excess of that. You can do the calculation if you look at this document. If you – do you want me to do that calculation?

If you want to do that calculation, Mr - - -?---No, no, if you want me to.

5 Sure, Mr Allert, do the calculation for us?---Well, this client has an account of \$100,000. The administration fee which is set out there is \$1200, so that's just over one per cent – 1.2.

So it might be 1.1 – 1.2 per cent?---1.2, actually. Yes.

10 And it's going to drop then by about 70 basis points?---Correct.

And that will then mean that the return on cash becomes marginally positive?---It will avoid it becoming negative and, yes, in this case it will be marginally positive.

15 And from the perspective of the trustee does that mean the issue will be closed?---Yes.

And have you made any inquiries to understand what return on cash is generated to members of other superannuation funds?---Yes.

20 And does that suggest to you that AMPs return on cash will remain uncompetitive?---Uncompetitive in relation to whom?

25 You know that there are other superannuation funds, and certainly at least some industry funds, that would be paying a higher return on cash?---If you're getting .2 per cent on cash it's uncompetitive if you invested directly into a term deposit, obviously.

30 Well, even if you weren't investing it in a term deposit, if you just invest it in an interest bearing account with AMP Bank you will get a much higher return?---That's true.

Do you agree?---Yes, I do.

35 Why is it that a member who puts their retirement savings with AMP – with NM Super and has those retirement savings invested 100 per cent in cash ends up with a substantially lower return than if they had just invested their retirement savings in an interest bearing account with AMP bank?---You would have to ask the client.

40 I would have to ask who, sorry?---The client, why they do that.

Your point is why are they foolish enough to invest their superannuation with AMP?---No, that's not what I'm saying at all.

45 But isn't that your point?---I'm saying you would have to ask the client what's in their mind when they put money into a cash account – and as you've pointed out, this person has had a cash account with AMP at least from 1 March 2014 to 28 February 2018. They left the cash there knowing the return they're getting.

I tender that statement, Commissioner.

THE COMMISSIONER: Have I not marked it, I think, as 5.273?

5 MR HODGE: Thank you, Commissioner. Is that a convenient time to take a - - -

THE COMMISSIONER: How long do you need, Mr Hodge? Is there work still happening on documents, that is, do I come back at midday, or what?

10 MR HODGE: Commissioner, I'm told if we break for 15 minutes, then we should be able to complete the download of documents.

THE COMMISSIONER: If I come back, what, five past?

15 MR HODGE: Thank you, Commissioner. Could we just, to be safe, could we say ten past, Commissioner, thank you.

THE COMMISSIONER: All right. Ten past.

20

ADJOURNED

[11.50 am]

25

RESUMED

[12.10 pm]

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner.

30

Mr Allert, we were talking just before the break about the fact that the AMP Super companies are going to lower their administration fees?---Yes.

And is that both AMP Super and NM Super?---Yes.

35

And is that a proposal that has been brought to the boards?---Yes.

And do the boards actually need to approve that or is this ultimately, again, to return to a point you were making earlier, something that has to be determined by AMP Life?---Alteration to products I think needs the approval of the board.

40

I see. So your understanding is, whether it's AMP Life or NMMT, somebody has come to the board and proposed an alteration of the product to reduce the administration fee?---Yes.

45

And that was something that has been put forward by these related party companies to address the uncompetitiveness of the fees?---Well, the negative return on cash, yes.

5 It's more, though, than the negative return on cash, isn't it? Isn't there an issue about the competitiveness of the fees being charged?---Yes.

And if we bring up APRA.0004.0001.3791. This is a letter from APRA to Ms Sansom but copied to you?---Yes.

10 And you see it's dated 16 October 2017?---Yes.

And would you have looked at this letter at the time it came in?---Yes.

15 And so APRA raised an issue last year about the SST and the SDF having high costs per members for their respective generic MySuper products?---Yes.

And the SST, that is a trust of which AMP Super is the trustee?---Yes.

20 And Super Directions, that is a trust of which NM Super is the trustee. So both trustees had MySuper products that APRA had identified as having high cost per member?---Yes, that's correct.

25 And so is it also this issue that was identified by APRA that is to be now addressed by substantially lowering the administration fees?---Yes.

And I tender that document, Commissioner.

30 THE COMMISSIONER: Letter from APRA to Sansom and Allert of 16 October '17, APRA.0004.0001.3791, exhibit 5.274.

**EXHIBIT #5.274 LETTER FROM APRA TO SANSOM AND ALLERT
DATED 16/10/2017 (APRA.0004.0001.3791)**

35

MR HODGE: You made a point just before the break, when I was asking you about the low returns on cash, that we would have to ask the client why they were invested in that way?---Yes, I said that.

40

And your point, as we understood it, was the member has made the choice to invest 100 per cent in cash. That's the first part of it?---Yes.

45 And they've made the choice to invest 100 per cent in cash with AMP?---Yes, obviously.

- And they – now, just on that, is it possible, if they’re in the Super Directions for Business product that the way in which they have ended up with AMP is because AMP is the default fund nominated by their employer?---Is it possible? Yes.
- 5 You’re not – ordinarily, if you’re going to end up in Super Directions for Business, is that because that’s a default fund nominated by an employer?---That’s part of it, yes.
- Can you just choose to join Super Directions - - -?---Yes.
- 10 - - - for Business?---Well, I think it’s closed now but you can. You could.
- As distinct from – because there’s also Super Directions Personal?---I would have to check on that. So I can’t be sure of my answer, whether it’s – if you do choose other than through the employer route, whether you get into Super Directions Personal or
- 15 whether you can get into Super Directions. I actually don’t know the answer to that.
- And so the member has ended up in the fund in the product. There’s still an obligation on you, as the trustee, isn’t there, to act in the best interests of the members?---Yes.
- 20
- And wouldn’t one way in which you would go about discharging your duty to act in the best interests of the members be to attempt to lower the fees on cash to produce a competitive return?---Yes.
- 25 And it seems as if, for reasons we’ve already looked at, merely dropping the administration fee is not going to achieve that?---Achieve that in terms of a competitive return - - -
- Yes?--- - - - with other available options for you to invest your cash?
- 30
- Yes. And indeed, with other available superannuation funds where you could invest your cash?---Yes, I think I would have to say yes to that.
- And does that suggest then that you are going – as the chairman of the trustee – are going to be left in a position where the trustee is unable to do something in the best interests of members because it is dependent upon the related company making a decision to lower the fees?---We have to approve the fees.
- 35
- Yes?---The lowering, yes, the fees.
- 40
- But you can’t force the related party companies to lower the fees?---No.
- You don’t have any capacity to be able to negotiate with them or say, for example, we’re going to stop investing through you and invest through some competitor?---We do have that ultimate capacity, yes.
- 45

Is there any sensible possibility that you would exercise that capacity?---Not – not in the current circumstances, no.

5 And so the consequence is your ability to do anything for your members is dependent upon the decisions that AMP Life or NMMT make?---In relation to this cash matter you're talking about?

10 Yes?---Well, I think – you've outlined how it all arose, and I think that that has put AMP Life on alert to what's happening with these cash products in the industry, and so we've entered into discussions with them and the outcome is the lowering of the fee.

15 Well, they've come to you with a proposal to lower the fee?---Well, we've had discussions in relation to that. I can't say that we initiated it, but obviously we've had discussions and we have equal concern as they do.

Yes. They've initiated a discussion with you about it?---I can't remember who started it but we are both very much alert to it.

20 And they've made a decision that they will lower the fee?---They've agreed to do that, yes.

And they've asked you to approve that?---Yes.

25 Which unsurprisingly, you're going to do?---Yes.

30 But beyond that, you are not in a position where you could sensibly say to AMP Life, "This structure is not an acceptable outcome for our members. So we are going to move our investments out of AMP Life and invest them in some other way"?---Not in relation to this matter, no.

35 And when you say "not in relation to this matter", does that mean that there would be certain circumstances where you could conceive of the possibility that you would withdraw your investments from AMP Life?---Yes. There are trigger events that we could trigger – if one of those events was triggered we could do that.

And would that be, for example, the Group going into insolvency or something like that?---Yes, yes. That would be a good example.

40 Is it that sort of level of trigger, that is, a truly catastrophic event - - -?---Not necessarily catastrophic but a very significant event, yes.

45 And I don't think we're disagreeing with each other. I think I'm just describing a situation in which AMP Group goes into liquidation as being catastrophic?---It would be catastrophic.

You agree that would be catastrophic?---Absolutely.

Commissioner, I don't have any further questions of Mr Allert.

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

5 MR HOLLO: Thank you.

<RE-EXAMINATION BY MR HOLLO

[12.20 pm]

10

MR HOLLO: Mr Allert, just before the – just before the break, you were asked some questions about the negative cash returns in the SDF products?---Yes.

15 And you're aware that since May where the matter was brought to the attention of the board, the board has had the matter investigated?---Yes.

And is it the case that the issue in relation to the cash returns is limited to a small number of cash options in the SDF and another fund?---Yes.

20 And are you able to say how many options or products the issue was related to?---How many products it was related to?

How many products or options it was related to?---No, I can't.

25 But it's certainly not the case that the issue in relation to cash returns is – relates to all AMP cash options?---No, it's not the case.

30 My friend – Mr Hodge asked you some questions about what had happened in relation to the board's consideration of the issue in relation to negative cash returns. You recall those questions?---Yes, I do.

Are you aware as to whether the board made any decisions in relation to that issue in its July meeting?---Yes.

35 This year?---Yes.

I hope this will work, Mr Commissioner. Could I call up AMP.6000.0233.0172. And if Mr – we will try and get you a copy of the board - - -?---Thank you.

40 I'm showing you, Mr Allert, the board papers from the 25 July 2018 meeting of the concurrent boards of which you're the chairman?---Yes.

And if you go to page 17 of the board paper, which is at 0188?---Yes.

45 There's a recommendation from trustee services in relation to the matter?---Yes.

And that's a common form of note or paper that you receive when matters are put up for the board's consideration during your tenure as chairman?---Yes. We receive a report from Trustee Services on the board paper that has being put up, yes.

5 From Ms Sansom's team?---Yes.

And then if you go to the next page, you will see a memorandum in relation to the Super Directions negative member return matter?---Yes.

10 And does that jog your memory as to whether or not the matter was considered by the board in July?---Yes.

And you will see on – at page 19 the key considerations – issues and considerations at 0190. Do you see that, Mr Allert?---Yes.

15

Thank you. And you will see that there are a number of products listed there in which the issue of negative returns has been identified?---Yes, I do.

20 And so far as you're aware, the nine products or options that are listed there are all the products where this issue has been identified?---Yes.

And there aren't any others, so far as you - - -?---Not to my knowledge.

25 If you go over the page at 0191, you will see under the heading Fee Reduction?---Yes.

Continuing:

30 *A review of the product's administration fee has been carried out.*

And:

Product has requested a reduction in the administration fee of .5 of a per cent.

35 ?---Yes.

Continuing:

40 *In relation to SRI products and .7 per cent in relation to the Mature products.*

?---Yes.

For each of the impacted products - - -?---Yes.

45 - - - investment options?---Yes.

And then under Incident Rectification you see that:

A project manager has been appointed to manage the incident.

?---Yes.

5 And the paper sets out how the rectification is progressing. And you will see there that the first aspect, part A, phase 1 is that:

Existing members within these investment options will have their product administration fee reduced for the relevant investment option.

10

?---Yes.

And the appointed actuary approval has been obtained in relation to the fee reduction.

15

?---Yes.

And that:

20 *IT changes are scheduled for –*

Were scheduled for 27 July for the reduction?---Yes.

And that:

25

Appropriate member and internal stakeholder communications will be prepared.

?---Yes.

30

Does that jog your memory as to whether or not the board in fact approved the fee reduction on 27 July?---Yes, it – it did, yes.

Sorry?---Yes, we did.

35

Thank you. And then underneath that, the second phase of the – what's described as the incident rectification involves remediation?---Yes.

And you will see that there is a remediation program that's set out there?---Yes.

40

Do you understand how the remediation will take place?---Yes.

45 On what basis? Could you explain it to the Commissioner, please?---Where people have had a negative return, they will have their fees reduced in accordance with this and be compensated for the cost that has been to them for having that negative return over the last three years, I think.

Was that something that you advocated for, Mr Allert?---Yes.

And then the last aspect of the incident rectification involves the requirements of monitoring investment options. Were you aware of that?---Yes.

5

And you will see that:

Appropriate reporting is being established to ensure that the trustee's obligations are met.

10

?---Yes.

Continuing:

15

And the gap in relation to the requirements highlighted that the monitoring and reporting of performance was completed at the underlying asset level by AMP Capital as the investment manager however reporting and monitoring at the member level at a net of fees and tax position was not being performed.

20

?---Yes.

Do you understand that that is being rectified?---Yes.

What confidence do you have that it will be rectified?---Complete.

25

Thank you.

THE COMMISSIONER: Just before the document comes down, can we go back a page. I want to understand how much funds under management was affected by this. Do I read those tables as indicating that there was – round numbers – 43 million funds under management - - -?---Yes.

30

- - - affected?---Yes.

35

With approximately 12 and a half thousand members?---Yes.

Yes.

MR HOLLO: Thank you, Commissioner.

40

THE WITNESS: And the remediation has been set in the order of about \$5 million.

THE COMMISSIONER: About 5 million. Yes.

45

MR HOLLO: That may have been my next question. Thank you. Now, before I tender that document, the - - -

THE COMMISSIONER: Just one other matter, Mr Allert. And do I understand that before the change in system, the trustee had no material provided to it about the position of individual members; simply what was going achieved in the related company?---Yes.

5

Yes. Go on, Mr Hollo.

MR HOLLO: Mr Allert, was your understanding that the issue that was – the issue that is sought to be rectified in relation to this matter in the board papers is the gap in relation to the reporting of performance at the underlying asset level?---Yes.

10

And that the problem was that the reporting was not done net of fees?---Correct.

Thank you. You were asked some questions by Mr Hodge concerning a particular member, and you were shown some member statements?---Yes.

15

And the member that – whose statements you were shown by Mr Hodge had invested 100 per cent cash in the SDF cash option. Do you recall that?---I do.

Have you inquired as to how many members have made 100 per cent investment in the SDF cash options?---Yes, I have.

20

And what was the result of that inquiry?---I think there were three above the age of 65 and four below the age of 65.

25

Thank you. And Mr Hodge also took you to a letter from APRA, 16 October 2017, which related to the MySuper options, and performance related issues there?---I haven't got that letter in front of me but yes - - -

Do you recall - - -?--- - - - I recall - - -

30

- - - the issue in - - -?---Yes, I do.

- - - October 2017. Now, is that something – was the MySuper pricing another matter which you considered at the July 2018 board meeting?---Yes.

35

And if I could just jog your memory. If you go to 0180. I will withdraw that. I'm so sorry, Mr Commissioner. In any event, do you recall whether or not the board made any resolutions in relation to the reduction of administration and investment – administration and investment fees at that meeting?---Yes, I think we did. I should need to read the paper.

40

THE COMMISSIONER: Well, he understands. I don't. I'm lost. What document are we looking at?

45

MR HOLLO: I'm so sorry, Mr Commissioner.

THE WITNESS: Yes, we did consider that.

MR HOLLO: Thank you.

5 THE COMMISSIONER: You're ahead of me, Mr Allert. I'm trying to catch up?---I beg your pardon.

I'm playing six furlongs behind the pack at the moment because we don't know what the document is. I mixed the metaphor myself, I think, with that one.

10

THE WITNESS: It's the board pack of 25 July. That's what you're referring to, isn't it?

15 MR HOLLO: And looking at the -- looking at 0184, Mr Allert. No, I don't want it brought up?---I beg your pardon.

I want you to look at it, Mr Allert?---Yes, I am looking at it.

20 Yes. And do you see there that some proposals for administration fees there are reductions in relation to the SST fund of 0.64 per cent to 0.29 per cent?---Yes.

25 Part of this document is subject to a commercial in confidence claim that hasn't been decided. In any event, Mr Allert, are you aware as to whether or not any resolutions were made in relation to price reductions in relation to the MySuper administration and investment fees?---Yes, they were.

30 Mr Commissioner, I tender the July 2018 board papers. And I have to come back to the price reductions once the confidentiality claims have been sorted out, but at this stage I will tender - - -

THE COMMISSIONER: I am surprised I haven't ruled on it. I seem to have ruled on more NPD issues in this than imaginable but there we are. ASL NM Super board papers for meeting of 25 July '18, AMP.6000.0233.0172. Is that it?

35 MR HOLLO: At 0188 through to 0194.

THE COMMISSIONER: Exhibit 5.275.

40 **EXHIBIT #5.275 ASL NM SUPER BOARD PAPERS FOR MEETING OF 25 JULY '18 (AMP.6000.0233.0172)**

45 MR HOLLO: Now, could I take Mr Allert to exhibit 5.260.

THE COMMISSIONER: I am surprised, 5.260. That's an agreement between the trustee of ANZ and ANZ.

MR HOLLO: Well, we will have to - - -

THE COMMISSIONER: It's not 5.260. What are you after? What's the doc ID?

5 MR HOLLO: AMP.6000.0151.617160.

THE COMMISSIONER: 5.270 trustee quarterly investment report, AMP
6000.0151.7160.

10 MR HOLLO: I am sure it was tendered.

THE COMMISSIONER: Yes, it was. It's exhibit 5.270.

15 MR HOLLO: Thank you. You were taken, Mr Allert, to 7162?---I am not sure
what – here is – yes, 7162. Yes.

The exceptions criteria?---Yes. This is part of the trustee quarterly investment
management report.

20 Yes. The BMM reporting in relation to that that Mr Hodge asked you some
questions about?---Yes.

And you were taken to the trustee's – trustee exceptions criteria and number 3 on that
page?---Yes.

25

You were asked whether the only way exceptions would come to the board is if there
was underperformance for five – for five years by reference to the first bullet point
on that page?---Yes. I remember that discussion.

30 If you have a look at the other bullet points under the – under the exceptions report in
section 3. Do you see that?---I can.

Yes. And is one of those matters:

35 *Any matter in the opinion of the trustee services concerning investment
reporting that should be brought to the attention of the boards.*

?---Yes.

40 And is that, to your understanding, one way in which reports would be issued to the
board?---Yes.

And do you understand that the other bullet points are alternatives to the first?---Yes.

45 Finally, you were asked some questions about the presentations that come to the
board from members of the business?---Yes.

And you said that members from the business come to the board to explain exceptions?---Yes.

5 Under the business monitoring framework. Is it the case that the board can ask for members from the business to come outside of the exceptions reporting?---Yes. And we do.

Thank you. No further questions.

10 THE COMMISSIONER: Yes. Thank you, Mr Hollo. Anything arising out of that, Mr Hodge?

MR HODGE: No, thank you, Commissioner.

15 THE COMMISSIONER: Thank you. Thank you, Mr Allert. You may step down?---Thank you.

You are excused?---I beg your pardon?

20 You may step down and you are excused?---Thank you.

Don't miss those words when they're uttered, Mr Allert?---Perhaps I wanted them emphasised, sir.

25

<THE WITNESS WITHDREW

[12.40 pm]

30 MR HODGE: Commissioner, the next witness is Ms Sansom, but I think there's a change of AMPs team. So could we just - - -

THE COMMISSIONER: Well, I think we call the witness and counsel can re-order themselves.

35 MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Leave the papers there, Mr Allert, and let others sweep them up for you. It's what board chairmen do.

40 MR ALLERT: Thank you, sir.

THE COMMISSIONER: Ms Sansom, if you would be good enough to come into the box. We're just sweeping some papers aside.

45

<RACHEL KATHERINE SANSOM, AFFIRMED

[12.41 pm]

<EXAMINATION-IN-CHIEF BY MR HOLLO

5 THE COMMISSIONER: Thank you very much, Ms Sansom. Do sit down. Yes, Mr Hollo.

MR HOLLO: Thank you. Is your full name Rachel Katherine Sansom?---Yes, it is.

10 And is your current business address 33 Alfred Street, Sydney?---Yes, it is.

Is your current position director of regulatory governance?---Yes, it is.

15 And in that role, do you provide trustee services to AMP Superannuation Limited and NM Superannuation Limited which are the trustees of AMPs superannuation funds?---Yes, I do.

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

20 Do you have the summons with you?---I do, yes.

I tender the summons.

25 THE COMMISSIONER: Exhibit 5.276 the summons to Ms Sansom.

EXHIBIT #5.276 SUMMONS TO MS SANSOM

30 MR HOLLO: Ms Sansom, have you prepared a witness statement which addresses certain topics and questions specified by the Commission?---Yes, I have.

35 And is that statement dated 9 August 2018 and relates to Rubric 5-35?---Yes, that's correct.

Do you have an original of that statement with you?---Yes, I do.

Are the contents of that statement true and correct?---Yes, they are.

40 I tender that statement and the exhibit.

THE COMMISSIONER: The witness statement of Ms Sansom, 9 August '18 concerning Rubric 5-35, exhibit 5.277.

45

EXHIBIT #5.277 WITNESS STATEMENT OF MS SANSOM CONCERNING RUBRIC 5-35 DATED 09/08/2018

MR HOLLO: Thank you, Mr Commissioner.

THE COMMISSIONER: Yes, Mr Hodge.

5

<CROSS-EXAMINATION BY MR HODGE

[12.43 pm]

MR HODGE: Thank you, Commissioner.

10

Ms Sansom, your present position is the head of regulatory compliance. Is that right?---It's the director of regulatory governance.

I'm sorry, the director of regulatory governance?---Yes, that's correct.

15

And does regulatory governance, is that the office of the trustee, in effect?---It includes the office of the trustee, yes.

20

Okay. And were you previously the head of the office of the trustee?---My previous job title was the director of trustee services which was, in effect, the office of the trustee.

In effect, the office of the trustee - - -?---Yes.

25

- - - is trustee services?---Yes, that's right.

So trustee services sits within – I'm sorry is it regulatory guidance or - - -?---Regulatory governance.

30

Governance. I apologise. So is what has happened that you've moved up to a more senior position, or is it a – effectively a rearrangement or a retitling?---Some additional functions came in to report to me following a restructure in the Group.

35

And when did the restructure of the Group happen?---It occurred in April last year.

So until April of last year, trustee services comprised how many employees?---Around about 11.

40

About 11?---Yes.

So that was you and then a staff of 10 that reported to you?---Yes, that's correct.

45

And were they all full-time employees?---There was a variation. Some people might have been on part-time terms and conditions, so maybe four days a week.

And so in full-term equivalent terms, how many employees were there in the – in trustee services until April of last year?---I would estimate that to be nine and a half.

And now that you are in relation to regulatory – or operating in relation to regulatory governance, have you had extra employees added to the office?---Yes, I have.

And so how many people report to you now?---Currently 15.

5

15. And in terms of the way trustee services goes about performing its duties, has that changed very much over the course of the last five years?---No, not to my knowledge.

10 And there has been a change in the directors of the trustees over that period of time?---Yes, that's correct.

Does – what was trustee services and is now regulatory governance, does that deal with something other than providing support or assistance to NM Super and AMP Super?---Yes, there's an additional function in the team which looks after the Group Investment Committee and the Group Investment Committee looks after additional entities. It also looks after the investment components for the super trustees but also some other entities in the Group.

15
20 And how many of the employees are devoted to the Group Investment Committee?---We do operate a fairly flexible structure, so depending on the peaks and flows of work, we may have almost everybody focused on trustee services at one time and then we may have four of the people in the team periodically just focused on the Group Investment Committee. It would depend on the timings and
25 preparations for either trustee board meetings or Group Investment Committee meetings.

And the Group Investment Committee itself - - -?---Yes.

30 - - - is that comprised of people from what is now regulatory governance and was trustee services?---So the Group Investment Committee is a management committee of AMP and it comprises senior executives from across the Group and has a non-executive chairman.

35 And who is the current non-executive chairman?---It's Trevor Matthews.

So he's external to AMP?---He's a non-executive director of the AMP Limited board as well but has this as a separate responsibility.

40 And - - -

THE COMMISSIONER: Can I ask you, Ms Sansom, just to try to keep your voice up a little. You have a naturally quiet voice. If you could speak a little louder it will help me?---Sorry, Commissioner. If I move the microphone a little bit closer, is that
45 a bit easier?

Well, yes. The people in front of me will work out what that's doing to the recording?---Okay.

5 MR HODGE: Now, does anybody from trustee services or regulatory governance sit on the committee?---No, they don't.

Okay. It provides support services to the committee?---Yes, it does.

10 And there are people from other parts of the group that actually sit on the committee and make the relevant decisions?---That's correct.

And those decisions would include things like how particular matters in relation to how investments are to be made?---Yes.

15 That may be too imprecise. There's – in terms of, say, the structure of AMP Super, AMP Super invests its assets through investment-backed or investment-linked life insurance policies with AMP Life?---That's correct, some of the superannuation money and other superannuation money is invested through platforms and doesn't go through a life-backed superannuation policy.

20 Now that's for NM Super isn't it rather than AMP Super?---For part of NM Super but for AMP Superannuation Limited it's all through life-backed.

25 Yes?---Yes.

All of the funds of which AMP Super is the trustee are invested through the life-backed insurance policies?---That's correct, yes.

30 And part of the assets of the funds of which NM Super is the trustee are invested in that same way?---Yes, that's correct.

And part of the funds are invested through platforms?---Yes, that's correct.

35 And NMMT operates those platforms?---It does.

40 And when it comes to the investments made by AMP Life of the funds invested with it through life-backed insurance policies, those funds are managed by AMP Capital?---Not all of them, no. So it may be that through various vehicles that the actual day-to-day management of the assets is done by other investment managers as well but AMP Capital oversees the whole piece. It may or may not be one of the managers.

45 I understand. There's an agreement in place between AMP Life and AMP Capital pursuant to which AMP Capital will oversee all of the investment of those assets that have come from AMP Super to AMP Life?---Yes, that's correct.

And then AMP Capital will determine, of those assets, which investment manager is going to manage those assets?---Yes, it will put decisions around that through to the Group Investment Committee.

5 And some of those investment managers might in fact be AMP Capital and some of them might be other investment managers?---That's right, yes.

And the decisions that AMP – or when AMP Capital wishes to make a decision about those types of things, does it then have to come back to the Group Investment Committee to seek the Group Investment Committee's endorsement?---Yes, it does but I should say that I don't personally run the day-to-day management of the Group Investment Committee although I do attend the committee as an observer.

10 You're just making the point that the – I think – that to be – you can't say exactly how it is that the Group Investment Committee operates on a day-to-day basis?---No, I can't.

When it has formal meetings, you attend those meetings as an observer?---I do, yes.

20 Okay. And you were the head of – or director of trustee services since what date?---Since late October 2015.

Okay. And before late October 2015, did you hold a position in relation to trustee services?---No, I did not.

25 Okay. So I want to ask you some questions about MySuper - - -?---Yes.

- - - and the MySuper transition plan that AMP used. I'm assuming you've probably reviewed documents in relation to this in the course of preparing to give evidence?---I have, yes.

30 And I assume also that in your role as director of trustee services, you would have had to, from time to time, review documents about the MySuper transition plan?---Yes, that's correct.

35 Do you know – or are you able to tell the Commissioner what part of AMP Group determined the transition plan?---So a specific project was set up to manage the Stronger Super implementation and the decision-making for the transition plans, as I understand it from reviewing the paperwork, sat with the trustee board.

40 The decision-making for reviewing the transition plan, is that right?---So the transition plans were drafted and put together by a special purpose project team, and those proposals were, as I've understood it from the material I've reviewed, brought to the trustee board for their endorsement.

45 And the board endorsed the plan that was brought to them?---Yes, that's correct. And then that plan was followed and implemented.

And related to the transition plan was the initial pricing of the MySuper products?---Yes, I believe so.

5 And are you aware that that was also something that was brought to the board – the boards of the trustees to approve?---Yes, I believe it was.

And so that we can see this in some context, can we bring up AMP.6000.0226.0015. So this is, as we understand it, the memo that was provided to the boards of AMP Super and NM Super in relation to the MySuper fees that were going to be charged?---Yes, that appears to be the document.

10

And do you know was it the case that the original fee basis was approved by the trustees in 2013 and then not subsequently revisited until a month or so ago, in July of 2018?---I believe there has been consideration given to pricing as various reviews have taken place, but the opportunity to endorse a price change hasn't been there until quite recently.

15

I don't think we're disagreeing with each other?---No.

20 The first time a price change was brought to the board of AMP Super and NM Super in relation to the MySuper products was in July of this year?---That's correct.

And so the boards had approved the original pricing back in 2013. Is that right?---Yes.

25

And if we look here, we see the memo is coming from the project director of FOFA and Stronger Super program?---Yes, that's right.

Is that the special program that you were referring to having been set up?---Yes, I think that was what it was called but there was also a program that was – the initials were TOPS but I can't remember exactly what that stood for, I apologise.

30

That's all right. And then the board was asked to approve the fee basis that was being put forward to it in this memo?---Yes.

35

And you can see, if you look at the bottom of the page, that at the time the board is being asked to approve it:

40 *The proposed fees have been discussed by the AFS product and insurance risk committee. They have not yet been approved.*

?---Yes, that's what it says.

45 And do you know that the boards of AMP Super and NM Super were being asked to approve the proposed fees but then ultimately it would then have to go to PIRC to approve the fees or to the boards of NMLA and AMP to approve them?---Yes,

there's various delegations in place within the enterprise around formalising approval of various fees.

5 And if we go over the page to .0016, we can see these are the fees that were being set out. And this is the information being given to the board?---Yes, that's correct.

10 And this was a memo that was supposed to be read together with another memo, which is – if we bring it up on the other side of the screen – AMP.6000.0225.0812. So this was a 10-page memo concerning the applications for MySuper product authorisation?---Yes.

I tender those documents, Commissioner.

15 THE COMMISSIONER: As one or separate, do you think, Mr Hodge?

MR HODGE: I will tender them together, Commissioner.

20 THE COMMISSIONER: Exhibit 5.278 will be memorandum to board of AMP Super and NM Super, 13 May '13, concerning MySuper fee basis, AMP.6000.0226.0015, together with memo to board of AMP Super and NM Super application for MySuper product authorisations, memo dated 7 May '13, AMP.6000.0225.0812, together exhibit 5.278.

25 **EXHIBIT #5.278 MEMORANDUM TO BOARD OF AMP SUPER AND NM SUPER, 13 MAY '13, CONCERNING MYSUPER FEE BASIS, TOGETHER WITH MEMO TO BOARD OF AMP SUPER AND NM SUPER APPLICATION FOR MYSUPER PRODUCT AUTHORISATIONS, MEMO DATED 7 MAY '13 (AMP.6000.0226.0015 & AMP.6000.0225.0812)**

30

MR HODGE: Thank you, Commissioner.

35 Now, could you just explain to the Commissioner what PIRC is?---I understand it to be pricing committee within the AMP business.

You don't sit or have anything to do with that committee?---No, I don't.

40 And interacting with that committee is not the role of the office of the trustee or regulatory governance?---No, it's not.

I want to show you another paper and see whether you've seen this before. Can we bring up AMP.6000.0153.0367. So this is a paper for PIRC for a meeting on 29 May 2013?---Yes.

45

Have you reviewed this document in the course of preparing to give evidence?---I've seen the document but I unfortunately haven't had the opportunity to consider it in depth.

5 Is it a document that you had seen before you came to give evidence?---No, not to my knowledge.

Is it the type of document that you would typically see within the office of the trustee?---No, it's not.

10 Commissioner, could I suggest – is that a convenient time, and it might be convenient if Ms Sansom is provided with a copy of the document over lunch which might speed up some of the questions after lunch.

15 THE COMMISSIONER: Yes. Can that be arranged, Mr Hollo, please.

MR HOLLO: We certainly can, Commissioner.

THE COMMISSIONER: Yes, thank you.

20 MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Come back at 2 pm.

25 MR HODGE: Thank you.

THE COMMISSIONER: 2 pm.

30 **ADJOURNED** **[1.00 pm]**

RESUMED **[2.00 pm]**

35 THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner.

40 Now, Ms Sansom, just before the break we were looking at this document, which is AMP.6000.0153.0367?---Yes, we were.

And did you get the chance to have a look at that over lunch?---I have read through it over lunch but I should note that it is a technical paper prepared by an actuary.

45 Sorry, the - - -?---Yes. So I just wouldn't profess to be an expert on this paper from having read it over a lunch break.

I understand. It's not the type of paper that would typically be provided to the trustee?---No, it isn't.

5 Thank you. And I just want to draw your attention to some parts of it. I think when you're referring to it being prepared by an actuary, do you mean the entire paper has been prepared by some actuarial part of AMP or do you mean it contains actuarial information?---?---It appears that the author is an actuary.

10 Okay. If you have a look on the first page do you see at the bottom of the page it says:

The timing of when the superannuation funds will automatically transfer members is still to be determined but it is likely that some members will opt into MySuper and transfer their own balances prior to that date.

15 ?---Yes.

20 Now, that would suggest – and I appreciate this is before you started with the trustee – that as at May 2013 the transition plan had not been determined?---I think initial transition plans had been put in place but they would continue to be looked at as events unfolded. So my understanding is that depending on how each transition went and whether it was successful that there was possibilities to make adjustments to that if required.

25 I see. There was an initial plan that was put in place at some stage, timetabling out how the transitions would occur?---Yes, that's my understanding.

30 And then if there were some issues that arose, then it might be necessary to change the future transitions?---Yes, that's my understanding.

35 And that timetable was put in place by some other part of the business away from the trustee?---Yes, but that would be typical, so the trustee outsources its activities and a specialist project team would need to be stood up for this time – type of very large change program.

And presumably, though, the transition plan is reported back to the trustee?---Yes.

Reported back in the sense of this is what we are going to do?---Yes.

40 And this paper which you can see from the bottom right corner is 46 pages long?---Yes.

45 This contains a lot of information about the assessment of the pricing for the MySuper product and also what the effects on margins will be as a consequence of the MySuper pricing?---Yes, it does.

Is that the type of information that you would typically expect to be provided to the trustee?---No, I wouldn't typically expect that to be provided.

5 Okay. And if you go to the page which is .0381. It's page 15 of 46. Do you see this is a section dealing with commission. 3.3?---Yes.

Do you see there's a sentence – the second sentence in the second paragraph which reads:

10 *Insurance premiums deducted from MySuper AUM –*

Is that assets under management?---Yes, it is.

Continuing:

15

MySuper assets under management might include an allowance for commission. Such commission will be retained by AMP and will not be remitted to the financial planner.

20 ?---Yes.

Do you know whether or not that's the case, that the insurance premium contains some allowance for commission?---I'm not sure if that would still be the case but it may well be.

25

And if we go then to page .0383, we see section 3.6, which is setting out, as at 29 May 2013, the modelled transfer rates for ADAs?---Yes, that's correct.

30 And you see that what's suggested at that time is that for products other than SuperLeader five per cent of the total balances will be transferred by 1 July 2014, 10 per cent by 1 July 2015, 60 per cent by 1 July 2016, and 90 per cent by 1 July 2017?---Yes.

35 Do you know how that schedule was arrived at?---No, I don't.

And then you see for SuperLeader, the schedule is a little different. It's five per cent of total balances transferred by 1 July 2014, 10 per cent of total balances by 1 July 2015, 15 per cent of total balances by 1 July 2016, and then 95 per cent of total balances by 1 July 2017?---Yes. That's what it says.

40

Which would suggest that 80 per cent of the balances of SuperLeader are to be transferred in the last year?---Yes, that's correct.

45 And, again, do you know why that was the proposed timetable?---I can see that this is how that was modelled. I'm not sure if that is consistent with the actual timetable.

Are the reasons why the transition plan was timetabled in a particular way, something that were communicated back to the trustee?---I'm sorry, Mr Hodge, would you mind repeating the question?

5 Yes, I said were the reasons why the transition timetable was planned in a particular way something that was communicated back to the trustee?---Yes, I believe so. So I believe the trustee was taken through the various complications to do with the ADA transfers. So the plan that was put in place was to, by the project, was to do the most simple ones first, and then to work through a program of increasing complexity, to
10 sort of test and learn the process to ensure it was done accurately. It was a very complicated process requiring multiple products, multiple system impacts.

That's the information that was provided to the trustee?---Yes, and also to APRA.

15 And to APRA. And was there any discussion with the trustee about what assessment AMP had made of the effect on revenue of transferring at particular times?---Not being in the role at the time, I wouldn't be able to say.

20 Subsequently, though, from when you took up the role in 2015, did anyone talk to the trustee or to you about what the effect on revenue was of transferring at particular times?---Not that I recall, no.

If we go to page .0391. We see one of the – this is a section dealing with sensitivities. What's explained is, at the bottom of page 25 of 46, that if 100 per cent
25 of the ADAs were transferred in 2014, the effect would be a reduction in the present value of profits of 86 and a half million dollars?---I'm not sure where you're reading the 100 per cent in 2014.

See it says just before the table:

30

However, if 100 per cent of ADAs transfer in 2014.

?---Am I – I'm wondering if I'm on the incorrect page because I'm not reading that.

35 It's page 25 of 46?---Okay.

THE COMMISSIONER: Immediately above the blue bar at the base of the page. Do you see the blue bar?---Yes, sorry. I was looking at the wrong table:

40 *However, if 100 per cent –*

Yes.

45 MR HODGE: So that – again, you and I can only read what internally AMP wrote down but internally it had assessed that if 100 per cent of the ADAs transferred in 2014, the effect would be a reduction in the present value of inforce profits of 86 and a half million dollars?---Yes.

And is that the type of information you would expect to be communicated to the trustee?---Not necessarily. I believe if this program were to occur today that based on the board that I currently serve that they would certainly ask those questions, yes.

5 If we go to page .0395. You see at the bottom of the page there's a heading Distribution Impact?---Yes.

And 6.4.1 deals with commission?---Yes.

10 And then 6.4.2 deals with value proposition?---Yes.

And do you see in the middle of that paragraph it says:

15 *PwC have been engaged to build out both an economic model and planner heat maps to identify impacted financial planners.*

?---Yes.

20 And if we then go over the page to page .0396, we see the explanation is:

This modelling will allow AMP to build comprehensive value propositions for the financial planners, employers and members to assist in achieving the following outcomes.

25 And the first item is:

To minimise impacts on AMPs net cash flow and operating earnings arising from the introduction of MySuper products.

30 ?---Yes.

Now, have you seen the PwC heat maps?---I believe I've been shown them in my preparation for today but I had not seen them prior to that.

35 They weren't something that was provided to the trustee?---No.

And was the trustee told or informed about the fact of these heat maps, to your knowledge?---Not to my knowledge, no.

40 And was the trustee informed that an outcome that AMP was seeking to achieve was to minimise the effects on AMPs net cash flow and operating earnings arising from the introduction of MySuper products?---Yes. One of the matters that this paper doesn't seem to address from my review that appeared to be of primary concern for the trustee board is actually the management of the risks associated to move – with
45 moving that amount of money and member accounts. So that appears to be the primary consideration of the trustee board. So while it would be natural for other

parts of the business to consider other stakeholders, that, from my read, is what the trustee board focused on.

Not from this paper?---No, not from this paper but from other material.

5

You're saying there's other material where the trustee is told there's a risk associated with transferring assets over too rapidly?---Yes, that's correct.

And that's the information that's provided to the trustee?---Yes.

10

By other parts of the business?---By the program who was running this – the implementation of the ADA transfers.

And as far as you can see, the trustee accepted that information on its face?---Yes, that's – that is my understanding from the information I've read.

15

And then if we go over the page to .0399. You see then there's an identification of future developments. And it's explained that papers will be submitted to the PIRC and/or AFS ALCO.

20

What's that? What's ALCO?---I think it was the assets and liabilities committee, I think.

I see. And we see the third point is:

25

Determining the schedule for transfers of ADAs to the appropriate MySuper offer.

?---Yes.

30

I tender that document, Commissioner.

THE COMMISSIONER: Paper for product and insurance risk committee, 29 May '13, MySuper pricing report, AMP.6000.0153.0367, exhibit 5.279.

35

EXHIBIT #5.279 PAPER FOR PRODUCT AND INSURANCE RISK COMMITTEE, 29 MAY '13, MYSUPER PRICING REPORT (AMP.6000.0153.0367)

40

MR HODGE: If we can then bring up AMP.6000.0225.0802. This is the trustee's MySuper transition plan in relation to the SST?---Yes, it is.

And it's dated 3 May 2013?---That's correct That's correct, yes.

45

Do you know whether it was updated?---I – I think so but I'm not 100 per cent sure.

Okay. And then if we go to page .0806. We see item 6:

5 *The trustee must by no later than 30 September 2013 and quarterly thereafter identify all members within each of the trustee's superannuation funds which holds an accrued default amount and the amount of each default contribution.*

?---Yes, that's correct.

10 And it doesn't seem as if – you tell me if you've noticed anything different in looking at this document – that there's any specific plan explained in the transition plan for when products will move over – I'm sorry, for when ADAs will move over to MySuper?---I think this document is dealing with the steps that need to be undertaken before any amounts can be transferred.

15 I see. At some time, though, the trustee was told what the actual transition plan was that had been determined by some other part of the business?---It will have been, yes, and it will have been kept updated of progress against those transition dates.

20 I tender that document, Commissioner.

THE COMMISSIONER: Trustees MySuper transition plan, 3 May '13, AMP.6000.0225.0802, exhibit 5.280.

25 **EXHIBIT #5.280 TRUSTEES MYSUPER TRANSITION PLAN, 3 MAY '13 (AMP.6000.0225.0802)**

30 MR HODGE: And then if we can bring up AMP.6000.0233.0051. This is the PwC AMP MySuper heat map analysis?---Yes, it is.

As I understood what you were saying before, the first time you saw this document was in the course of preparing to give evidence?---Yes, it is.

35 After the Commission had notified the solicitors for AMP that this was a document that might be tendered?---Yes, that's correct.

40 And is the information that's contained in this document the type of information that you would expect to be provided to the trustee?---No, it's not.

If we go to page 2 of the document. This is the executive summary and we can see the bold headline at the top:

45 *MySuper will impact planners and AMP significantly. Accurately identifying the practices to support or specialise is key to a successful corporate super strategy.*

?---Yes, that's correct.

5 And then it explains a few findings and insights, one of which is 10 practices have greater than 60 per cent of their corporate super revenue predicted to be exposed to MySuper.

?---Yes, that's correct.

10 Do you understand what it means to say that revenue is exposed to MySuper?---I would assume that what PwC is referring to is that advisers would have been receiving revenue from the accounts that would then be subject to accrued default transfers.

15 They were receiving revenue while the assets were still part of the accrued default amounts?---Yes.

Once those amounts were transferred from the ADA product over to the MySuper product, those streams of revenue would stop?---That's correct, yes.

20 And, hence, they have revenue that is exposed to MySuper?---That's correct, yes.

25 And do you recall – again, accepting that you only came to the trustee in 2015 – any discussion with the trustee about an issue around advisers' streams of revenue being exposed to a MySuper transition?---I don't recall having read that in any documents, but the trustees need to focus on the member, not on outcomes for advisers.

30 Yes. Well, one way they could do that, one would think, is by making sure that the parts of the business designing the transition plan are also focused on outcomes for members rather than benefits for other parts of the business. Do you agree?---Yes, I agree.

35 And it's difficult to do that unless the other parts of the business tell you, that is you, the trustee, what they're up to?---They may have spoken to the trustee about it but I wasn't there and I don't know.

All right. And if we go through to page .0059. We see what's explained at the top of that slide:

40 *11 practices have greater than \$400,000 in corporate super revenues with over 50 per cent of these revenues predicted to be exposed to MySuper.*

?---That's correct.

45 And throughout the rest of this document, it goes through in great detail identifying which adviser groups are exposed or significantly exposed to the transition from ADAs to MySuper?---Yes, I believe it does.

And by “exposed”, what we mean is they will lose the streams of revenue if the books of clients transfer from ADAs over to MySuper?---That’s my understanding, yes.

5 And then if we go through to page .0081. We see – so this is page 31 of the slide pack – we see step 2 in the development of a planner proposition is dealing with:

Critical issue solution through heat map value propositions.

10 ?---Yes, that’s right.

And you see the paragraph – the second paragraph under that step says:

15 *Several of the decisions regarding MySuper, such as BOLR and timing of ADA transition, may be informed through leveraging the heat map data and complementing it with further qualitative and quantitative research to test solutions.*

20 ?---Yes, that’s correct.

And do you know whether that occurred, whether the heat map was used to guide the ADA to MySuper transition process?---I have no reason to – to form a view as to whether it was or it wasn’t. Obviously, this was analysis being done for a particular stakeholder lens which is fair for people to do but my understanding is the overarching reasons for the transition timetable were more one of managing the operational risk of doing the transitions. So I would expect different parts of AMP to do analysis for particular stakeholder groups but it’s still my belief that the overarching reason was managing the risk.

25 30 Because that’s what was said by one part of the business to the trustee?---That was the lens taken by the trustee.

And if we go to page .0093. We see the headline Calculations for Revenue?---Yes, we do.

35 And we see there’s a gross margin basis points summary of each different product based on the size of revenue exposed to MySuper?---Yes, that’s correct.

40 And you see the products with the two highest gross margin basis points exposures are Flexible Lifetime Super?---Yes.

And Custom Super?---That’s correct, yes.

45 And do you know which products were transferred last?---It would be these two products which were also the most operationally complex to transition.

- I see. And so your belief is this information about the effects on revenue was not something that was taken into account in determining the transition plan?---I'm sure it was one of the matters taken into account but I – my understanding is that the operational risk would have usurped this analysis in the trustee's eyes.
- 5 I'm sorry, usurped this analysis in the trustee's eyes?---I – I strongly believe that the trustee's considerations around the complexity of making the transfers is the primary factor that drove their consideration of the transition plan.
- 10 I think, though, we need to just be clear about what the decision-making process is. It wasn't the trustee that designed the transition plan?---No, but they were the ones, as I understood it, that approved it.
- Another part of the business designed the transition plan?---Yes, that's correct.
- 15 That part of the business came and brought the transition plan to the trustee?---Yes, they did.
- And the transition plan – and the trustee, in the way that it seemingly always does, approved what was brought to it by that other part of the business?---Yes.
- 20 And unsurprisingly, perhaps, the trustee, which wasn't told anything about the effects on revenue, didn't say anything about the effects on revenue?---I don't know what the discussion would have been at the time.
- 25 I see. When you were expressing your belief about the lens through which the trustee approached this, what was the basis of that belief?---Reading the papers that were given to them and also the minutes from those meetings.
- 30 I see. And the papers said there's a risk – this is your recollection – the papers said there's some risk in transitioning more quickly than this?---Well, certainly when I came into the role and had a briefing by the executive responsible for managing the transition plan at the time, the explanation given to me, and also seeing that given to APRA in the consultation as things have gone along, is to do the simplest ones first, to do those successfully, to learn from that and to keep moving forward as things became increasingly complex. I do note the observations you're making, and I agree with the observations you're making but I do believe that that was the case.
- 35
- 40 Sorry, you agree with which observations that I'm making?---Around the higher revenue to financial advisers also coming from the most complicated products to transition.
- And do you know why they were the most complicated products to transition?---I believe it was the number of different permutations there could be in identifying the accrued default amounts, ensuring that you were – because what you're actually doing with an accrued default amount in transitioning it to MySuper is moving a member's money without their consent, so there was quite a considerable amount of
- 45

work done to ensure that the members who were being transferred were not being financially disadvantaged by the transfer. So I believe as they went through each product, that analysis became more complicated and there was more of an IT component to it. That is my understanding.

5

I'm not sure I follow that for this reason: they do an analysis with PwCs assistance in May of 2013 where they identify, that is, the other part of the AMP business, that the products that have the – will most decrease the revenue going either to AMP or the planners are the Custom Super and Flexible Lifetime Super products. Do you agree?---Yes.

10

And it would seem to follow that those must be the products where the members will most benefit in terms of fees by moving over to the MySuper product?---That could be the case but my understanding is there are additional considerations into whether the financial interests were served. So, you know, insurance arrangements, whether the – particular member amounts were subject to other matters.

15

I see?---And taxation considerations. This is obviously a piece of analysis that has been done. I can't speak more about it because I wasn't involved in it being done.

20

I understand. I tender that document, Commissioner.

THE COMMISSIONER: AMP MySuper heat map analysis, 1 May 2013 by PwC, AMP.600.0233.0051, exhibit 5.281.

25

EXHIBIT #5.281 AMP MYSUPER HEAT MAP ANALYSIS, 1 MAY 2013 BY PwC (AMP.600.0233.0051)

30

MR HODGE: And then just to tie this off, can we bring up AMP.6000.0005.5817. So this is the – or a part of the papers for the – a meeting of the boards of AMP Life, AMP Life – sorry AMP Limited, AMP Life Limited and NMLA?---Yes, that's correct.

35

And you wouldn't, as I understand it, attend these meetings?---No, there's only one – for one very brief item once a quarter that I would attend.

40

And if we go to page .5887. We see the top item on that page:

Successful ADA transition: during the last weekend in April we completed our largest ADA transition which marked the end of the program of work. The transition involved the consolidation of \$4.836 billion in default super funds.

45

And then you see a little further along:

ADA impacted members across Flexible Lifetime Super, Custom Super and residual members from Signature Super, AMP Flexible Super and SuperLeader.

5 And that's consistent with what you were acknowledging before, which is the residual members of Signature Super, AMP Flexible Super and SuperLeader were transferred in April of 2017, along with what seems to have been the bulk of the Flexible Lifetime Super and Custom Super members?---Yes.

10 I tender that document, Commissioner.

THE COMMISSIONER: Board papers AMP Limited, AMP Life and NMLA, 22 June '17, AMP.6000.0005.5817, exhibit 5.282.

15

EXHIBIT #5.282 BOARD PAPERS AMP LIMITED, AMP LIFE AND NMLA, 22 JUNE '17 (AMP.6000.0005.5817)

20 MR HODGE: And then can we then bring up AMP.6000.0061.5936. So this is a memo dated 27 April 2016 for the audit committees of AMP Life and NMLA?---Yes, that is.

25 Again, these are not committees that you would attend?---No, they are not committees I would attend.

And this isn't a memo that you had seen at least before preparing to give evidence?---That's correct, yes.

30 Have you reviewed it in the course of preparing to give evidence?---I have glanced through it.

Okay?---There was a considerable number of documents, Mr Hodge.

35 Yes. And do you see it's concerned with an update on strategic review of BOLR?---That's correct, yes.

Are you familiar with BOLR?---I'm familiar with the term BOLR, yes.

40 You understand the basic idea of it which is it's an offer made to planners affiliated with AMP, that AMP will be the buyer of last resort?---Yes.

45 And if you go to page .5937. This is dealing with transition strategy. Were you aware that a concern within other parts of the AMP business was the effect on BOLR of the transition from ADAs to MySuper?---I can see how it would be a concern but it's not something I've looked at in any depth.

It wasn't something that was mentioned to the trustee?---Not to my knowledge, no.

And you see the third paragraph on that page says:

5 *The capital impact for practices transitioning to the new valuation approach is forecast to be net neutral at a portfolio level. However, there is a significant proportion of practices that will experience a reduction in their register value by over five per cent (this is predominantly due to the reduction in ADA value).*

10 ?---Yes, I can see that.

And then you see:

15 *The agreed transition strategy is designed to mitigate this risk by smoothing changes over 2016 and '17.*

?---Yes.

Continuing:

20 *Gradual reduction of ADA values and the introduction of other terms in June 2017 creates a glide path of any practice capital loss that is typically exceeded by practice growth over the same period.*

25 ?---Yes.

And on its face, that would seem to suggest that the way in which ADA values are being reduced, which is a consequence of the transition plan, is being factored in or being affected by a strategy that has been developed in relation to BOLR. Do you agree?---Yes, I don't know what would be the – I assume that the timetable would be what's informing the BOLR strategy.

30

All right. I tender that document, Commissioner.

35 THE COMMISSIONER: Memorandum to AMP Life and NMLA audit committee 27 April '16, AMP.6000.0061.5936, exhibit 5.283.

40 **EXHIBIT #5.283 MEMORANDUM TO AMP LIFE AND NMLA AUDIT COMMITTEE 27 APRIL '16 (AMP.6000.0061.5936)**

MR HODGE: Now, I want to then move to a different topic which is concerned with the setting of performance targets for the MySuper products. We've looked already at a document from May of 2013 where we saw that the fee basis for MySuper was presented to the board of the two trustee companies to be approved then, that is then in May 2013?---Yes, that's correct.

45

And then if we then bring up AMP.6000.0128.0515. We see these are the papers for the trustee meeting on 28 March 2014?---That's correct.

5 And if we go to page .0541. You see this is a paper for the board explaining investment performance and measures of success for MySuper funds?---Yes, it is.

10 And if we go over the page to page .0542. You see at the top there's a section which explains what the measure of success is for the MySuper products, and then it's explained:

Given the Australian regulatory environment, performance versus CPI plus target will be the key measure of success for the MySuper life cycle funds (and also for the MySuper Balanced).

15 ?---That's correct.

20 And you're aware that for each of the MySuper life cycle funds and also for the MySuper Balanced fund – I'm sorry, I said fund – products there is a particular target that is set which is CPI plus a certain number of basis points or percentage?---That's correct, yes.

And that is set not by the trustee but by somebody else?---It is set by somebody else and then proposed to the trustee for their approval.

25 I see. I tender that document, Commissioner.

THE COMMISSIONER: The board papers AMP Super and NM Super, 28 March 14 AMP.6000.0128.0515, exhibit 5.284.

30

EXHIBIT #5.284 BOARD PAPERS AMP SUPER AND NM SUPER, 28 MARCH 14 (AMP.6000.0128.0515)

35 MR HODGE: Then can we bring up AMP.6000.0164.0524. This is a memo for the AMP investment committee dated 11 May 2015. Are you able to just explain to us what the AMP investment committee is, where it sits?---So the AMP investment committee is the precursor to the current group investment committee. So it was a management committee looking at investment decisions.

40

And so is that a committee supported by regulatory governance?---Yes, prior to them coming to report to me.

45 This is the committee that existed – I'm sorry, did you say prior to them coming to report to you?---Yes. So the – the investment governance team who now forms part of the regulatory governance team sat elsewhere in the AMP business before the

changes that I spoke about with my change in job title when they came to report to me in April – around sort of mid-year 2017.

5 All right. And then you see in this paper, if you look down at the bottom of the first page, the AMP investment committee is being recommended to ask the trustees to resolve to – and then in subparagraph (c):

Endorse the CPI return target changes for the AMP MySuper 1990s, AMP MySuper 1980s, and AMP MySuper Balanced investment options.

10

?---That's correct, yes.

And if we go over the page to .0525, we see at the bottom of the page a paragraph which says:

15

A paper presented to the Life boards and Super boards in June 2015 discussed the investment implications of an extended period of lower returns. The challenge for investment offers with CPI plus targets is that the lower rate environment has driven down long-term return expectations making it more difficult for fund managers to have a reasonable degree of confidence they will meet their stated return targets.

20

?---Yes, that's correct.

25 And what's then recommended through the rest of the paper is that the CPI plus return targets be lowered for some of the MySuper products?---I believe so, yes, reflecting the low return environment.

30 And this has happened on a number of occasions, that is, on a number of occasions over the last three years, AMP Capital has sought a reduction in the return target for the MySuper products?---Yes, that's correct.

35 And is the way that this process works that AMP Capital says to AMP Life it's going to be less probable that we will achieve the return target that we've previously set, so, therefore, we want the return target reduced?---Yes. That would be – my understanding of the process is that AMP Capital does economic modelling to look at what the likely outlook is for investment returns, and when it's established that you're operating in a low return environment that may continue for some time, they can trade off, you know, still trying to aim for that higher target but in order to do that they would have to take on more investment risk on behalf of members. So that's the decision that's being made, if you want to keep with the current level of risk in the funds or do you want to reduce the target to something more reasonable.

40

45 And do you know, is there any reporting back to the board, as to how the targets set by AMP Capital for the MySuper products issued by the trustees, compare with targets set for other MySuper products?---With competitors' products?

Yes?---Yes, that's a factor that I believe is taken into account.

5 Is there reporting back to the trustee boards, though, about how the particular return targets compare to the return targets for other products?---I believe it's a matter of discussion. As I attend the Group Investment Committee as an observer and also attend the board meetings I can recall that exact discussion taking place but I'm not sure which forums. Probably both.

10 And do you recall whether there was a view as to how the return targets set by AMP compared to its competitors?---I'm not sure I understand your question.

Do you recall whether AMP was seeking a higher or lower return than that sought by its competitors?---I think generally comparable.

15 A comparable return?---For the level of risk associated with that particular option and depending on what that option is aiming to do.

Just so we can be clear about what we're talking about, with the life cycle
- - -?---Yes.

20 - - - options for different age cohorts - - -?---Yes.

- - - there will be a different balance between growth and defensive assets?---There will be, yes.

25 And when you talk about the different risk profile, is that what you're talking about?---Yes. So for the life cycle options, and I do need to note I'm not an investment manager, but what they're also taking into account is the targeting a comfortable outcome in retirement so it's not sort of a year-by-year performance target in itself. They're looking at managing what they refer to as a glide path for
30 those particular age cohorts. So the risk as they go into retirement is managed and it takes into account sequencing risk. So for example if you were to get a large dip in investment markets shortly before, you know, in the five years out from retirement, that would have a detrimental impact. So it's not a strict comparison they're doing.
35 They're actually taking other factors into account.

And, again, so that we make sure we're understanding each other, your understanding or recollection is that, for example, for a cohort that might be born
40 1960 to 1964, the risk appetite and return target for that cohort when they're in one of the AMP MySuper products, is comparable to that for a product issued by a different fund?---It may be broadly comparable, but it may also be taking additional factors into account. So it is this managing the sequencing risk as you get closer to retirement. So there's a sort of additional level of investment management expertise being applied, if you like. So some funds will just do a strict change growth and
45 defensive as you go along but these life cycle funds are actually aiming for a longer term consideration.

And your point is that that explains what exactly in relation to - - -?---It may explain differences in targets year by year and it may also explain difference in outcomes.

I see. I tender that document, Commissioner.

5

THE COMMISSIONER: Memorandum to AMP investment committee, 11 May '15, concerning 2016 annual strategic asset allocation and standard risk measure review, AMP 6000.0164.0254, exhibit 5.285.

10

EXHIBIT #5.285 MEMORANDUM TO AMP INVESTMENT COMMITTEE, 11 MAY '15, CONCERNING 2016 ANNUAL STRATEGIC ASSET ALLOCATION AND STANDARD RISK MEASURE REVIEW (AMP 6000.0164.0254)

15

MR HODGE: Is there a point in time at which you became aware that the AMP MySuper products were at least in some cases not performing well on a net basis compared to competitors?---Yes.

20

And when was that?---I can't recall exactly.

Okay. Was that something that you took up to the board?---Yes.

25

When did you take it up to the board?---When I became aware that it was an issue. So we do quarterly reporting and checking how investment performance is fairing. There was a particular time when the performance looked quite poor so we sought to take up to the trustee board – I'm thinking it's in 2016 but I'm not exactly sure and I apologise for that, that we had looked at the performance reports and had concerns over that and there was also a period where there was some negative media coverage so we took some – asked the investment people to come to the board and give them an additional level of information and explain why that was.

30

I wonder if what you're thinking of is this. Can we bring up AMP.6000.0128.5191.

35

THE COMMISSIONER: Can we have the number again, 6000.0128?

MR HODGE: 5191. So these are the meeting papers for a concurrent meeting of the trustee boards on 20 September 2016?---Yes, they are.

40

If we go to page .5549. Is this the paper that you're thinking of?---This is the exact paper I'm thinking of, Mr Hodge.

And, in particular, I think, what you're perhaps recalling is we see there's a section which is Executive Summary. And the second paragraph under that heading says:

45

The first section of this paper focuses on how MySuper Life Cycle is performing relative to its objectives. The second section reflects on analysis undertaken in response to an article that has been featured in the Financial Review.

5 ?---That's correct, yes.

And that article had included performance charts which depicted two of the AMP products as the second and third poorest performing funds for the 2016 financial year?---I believe that's correct, yes.

10

And if we go over the page to .5550, we see a table which is gross performance and net performance – or two tables?---Yes, that's correct.

15 Now, one of the issues that the AMP trustee boards have recently grappled with is that for years reporting has been to them on the basis of gross performance before the deduction of fees?---Yes, but perhaps with the deduction of investment fees but not all the fees.

20 That's right. And so these tables seem to reflect that same problem, which is there's gross performance at the top, and the net performance which – you can't quite see this because the blow-up has blocked out the detail below – but the detail below says:

Net performance equals returns are net of investment fees and platform fees and superannuation tax.

25

?---Yes, that's correct.

30 And the issue was that the board was receiving reporting on returns net of investment fees and presumably platform fees, perhaps, but not net of administration fees?---Yes. So the reporting had been focusing on the most variable factor as being the investment performance, and to sort of, if you like, compare the performance of the investment manager rather than the overall product.

35 I tender that document, Commissioner.

THE COMMISSIONER: Board papers AMP Super and NM Super for meeting of 20 September '16, AMP.6000.0128.5191, exhibit 5.286.

40 **EXHIBIT #5.286 BOARD PAPERS AMP SUPER AND NM SUPER FOR MEETING OF 20 SEPTEMBER '16 (AMP.6000.0128.5191)**

45 MR HODGE: And then if we then bring up AMP.6000.0152.0678. Now, this is a memorandum from the AMP investment regulatory governance to superannuation retirement and investment platforms?---Yes, that's correct.

Are either of these groups within the trustee?---So the AMP investment regulatory governance is the investment specialist team within my overall team and it's also addressed to trustee services so - - -

5 Sorry, say that again?---It's also addressed to trustee services so yes.

I see. It's part of your regulatory governance team sending a report to a number of people, including trustee services?---Yes, to increase understanding of a particular matter.

10

And if we go to page .0679, we see a heading at the bottom of the page which is Differences in Performance Measurement?---Yes, that's correct.

15 And this, I think, ties into the point you were making before, which is the quarterly investment manager reports include comparisons against a CPI objective and neutral benchmark and performance is reported on a gross basis before fees and taxes?---That's correct, yes.

20 Whereas what's explained in the preceding paragraph is that the APRA reporting methodology focuses on the net member experience by incorporating all fees and taxes that apply?---That's correct, yes.

25 And the consequence was that there was some analysis done to attempt to understand how AMPs products compared to other products if you actually took into account fees?---Yes, that's right.

30 And if we go to page .0683. You see there's an explanation here about, under the MySuper investment management agreement, what happens in relation to performance-based fees?---Yes, that's right.

35 And I think what had happened – you may or may not be aware of this – is that there had been a – or there was going to be a change to the fee structure so that there would be less performance-based fees and an increase in the actual fees?---Yes, I think so, although I wasn't intimately involved.

That was agreed between AMP Life and AMP Capital?---Yes.

40 And then if we go over the page to .0684, this is showing a ranking as at 30 September 2016 of various AMP MySuper products at different life cycle stages compared to competitors?---Yes, that's correct.

45 And we see, for example, for the 1940s cohort, of which there are only 29 products that were compared that were on the market – do you see that at the top of the page?---Yes.

And a 1940s life cycle product would be something that you would go into if you're born in the 1940s?---That's correct, yes.

So it's going to be heavily weighted towards defensive assets rather than growth assets?---Yes, it would be.

Sorry, did you say it could be?---Yes, it would be.

5

And we see out of 29 products, the AMP MySuper capital stable product ranked 19th out of 29 based on gross return, ranked 26th out of 29 on administrative fees and costs, and then as a result ranked 23rd out of 29 on net return to members?---Yes, that's correct.

10

And as we go down, we can see, if we just look at the standard products rather than the products for particular employer groups where there will be some discount to the fees, that for the AMP MySuper 1950s product that ranked 49th out of 63 on net returns?---Would it be possible to blow that up?

15

Yes. AMP MySuper 1950s, 49 out of 63?---Yes, that's correct.

And on fees, it ranked 59th out of 63?---That's correct.

20

And then for the 1960s cohort out of 34 products we see AMP MySuper 1960s ranked 27th out of 34 on the net outcome and 31 out of 34 on the fees and costs?---That's correct, yes.

25

And just to take some other examples, if we go over the page, we can then see the two-year annualised results?---Yes, that's correct.

And, again, for the life cycle products, can I suggest almost invariably the standard or generic AMP MySuper product did not fare well?---No.

30

As – you are agreeing with me it did not fare well?---Yes, on the basis of the way it has been ranked in this table.

35

And this was something that is reported internally on 3 April 2017. What happened as a result of it?---One of the key purposes, as I understand, of this piece of analysis was to ensure that the investment manager – so AMP Capital and the product side of the business all had reached a common understanding on the way the calculations were done.

40

Did you, at this point in time – I'm sorry, I tender that document, Commissioner.

THE COMMISSIONER: Memorandum 3 April '17 from AMP investment regulatory governance concerning MySuper performance measurement, AMP.6000.0152.0678, exhibit 5.287.

45

EXHIBIT #5.287 MEMORANDUM 3 APRIL '17 FROM AMP INVESTMENT REGULATORY GOVERNANCE CONCERNING MYSUPER PERFORMANCE MEASUREMENT (AMP.6000.0152.0678)

5

MR HODGE: Did you at some point in time go to the board about what this comparison, once you took into account fees, showed?---No, I don't believe I did.

10 And are you able to explain – I'm sorry, I should ask, did anybody else go to the board as a consequence of this comparison?---I don't believe so. This was part of an ongoing piece of work to ensure there was common understanding and to inform future reporting.

15 I see. And then in July of 2017, if we bring up APRA.0004.0001.6657 – unfortunately the email addresses have not been redacted on this document, Commissioner, but no doubt you would direct that those email addresses not be published.

20 THE COMMISSIONER: The personal identifying information we commonly redact and there will be a non-publication direction about that.

MR HODGE: Thank you, Commissioner. In any event, I will - - -

25 MR HOLLO: This isn't a document that we've seen, Commissioner.

MR HODGE: It's not AMP – it's an APRA document, Commissioner. That's not to say that it's APRAs fault, it's nobody's fault. But in any event, it hasn't been redacted. I will see if I can get you a hard copy, Ms Sansom?---Okay.

30 Do you recall the email from APRA?---I didn't see it for very long.

All right.

35 THE COMMISSIONER: I think we can put it up with a giant black block over - - -

MR HODGE: That's very helpful.

THE COMMISSIONER: - - - everything except the main text.

40 THE WITNESS: Thank you.

MR HODGE: So there was an email – now, you were copied to this email?---I would expect so, yes.

45 And it's an email from an analyst at APRA explaining that in light of a MySuper determination of scale assessment that was being dealt with, one aspect that was considered were fees compared to peers?---Yes, that's correct.

And the paper it says called out that:

5 *The generic MySuper options for Super Directions and SST were bottom quartile for the second year and that product management were undertaking a review to determine the potential underlying causes.*

?---Yes, that's correct.

10 Now, again, this email and this issue that was being raised, was this something that was then brought up to the board?---The document that it's referring to around MySuper scale test is a board paper. So annually the MySuper scale test is taken up to the board and discussed.

15 I see. I think we're not disagreeing with each other. The – each year there is an annual MySuper scale assessment that is done for AMP?---Yes, that's correct.

Presumably for – well, it is done for all of its MySuper products?---For all of its MySuper products, yes.

20 And that has to be taken up to the board?---Yes.

And approved by the board?---The – yes, the acceptance of the findings of it.

25 Can we take – thank you. And the point you're making is the paper that is being referred to by APRA in this document is the MySuper scale assessment?---I believe so, yes.

I see. And so, therefore – and, therefore, there wasn't something new to - - -?---No.

30 - - - explain to the board because APRA was just noting what they had discovered on reading a paper that had already been provided to the board?---Yes, so we would provide those scale assessment papers to APRA after the board has reviewed them.

35 Can we take that document down, Commissioner, and I tender it.

THE COMMISSIONER: Email APRA to AMP concerning AMP Super MySuper scale assessment, 3 July '17, APRA.0004.0001.6657, exhibit 5.288.

40 **EXHIBIT #5.288 EMAIL APRA TO AMP CONCERNING AMP SUPER MYSUPER SCALE ASSESSMENT DATED 03/07/2017 (APRA.0004.0001.6657)**

45 MR HODGE: I should note, Commissioner, there may need to be a non-publication direction made with respect to the particular employer that was named in that document.

THE COMMISSIONER: I think I have made NPDs in respect of that particular employer and there will be one in respect of the employer named in that email.

MR HODGE: Thank you, Commissioner.

5

And then in 2017 or December 2017 there was another MySuper scale assessment. If we bring up AMP.6000.0128.8032. If we go to the second page of the document so we can see – I’m sorry, the third page of the document. So this is the board papers for the meeting of 6 December 2017?---Yes, that’s correct.

10

And if we then go through to page 8098. And this is the – what’s described as the year 4 MySuper scale test?---That’s correct, yes.

15

Now, this is said to come from the head of product management and the senior product portfolio manager, corporate superannuation?---That’s correct, yes.

20

Does your team have any involvement in the preparation of this document?---We may assist with the review of it and the – a document focusing specifically on the investment components would have gone to the group investment committee prior to this paper coming to the trustee board.

25

I see. The process by which the MySuper scale assessment occurs is people within other parts of the business, product management, effectively, prepare the MySuper scale assessment. That’s the first step?---So the – the full sort of process would be from the investment component of it, that would be performed by AMP Capital. That would go to the Group Investment Committee with – for their consideration with a separate paper from Product. And then what would happen is that paper would be supplemented with further product related lenses, so including the product fees rather than just the investment perspective and brought to the trustee board by product but with attendance at the meeting by the investment specialists.

30

35

Okay. And we understand it takes three months for AMP to prepare – or some months for AMP to prepare its MySuper scale assessment. Is that right?---It does take some time. There’s some considerable analysis involved. The exact time period I wouldn’t know because I just look at it when it comes out.

All right. Again, that’s something that some other part of the business is principally doing?---Yes, but with involvement of my team to sort of sense check the findings.

40

And if we go to page 8100. We see under Fees, if we just blow up that section, we see it’s explained:

AMPs number 1 market position translates to top quartile performance for single strategy fees but the position is reversed for the life cycle funds.

45

And that’s what we were looking at before, that the fees are quite poor for the life cycle products?---Yes.

And is the reason the – or are you able to explain why the fees are low for the single strategy products?---Because it's a simpler product offer. It's not taking into account in the same way that the life cycle funds are this sort of transition through to your retirement date.

5

If you come in through an employer program, do you go into the life cycle products or into the generic products?---It would depend, it would vary.

10 But you get a substantial discount on the fees if you come in through an employer plan?---Yes.

And - - ?---Depending on the employer and the size of the employer.

15 And the bigger the employer, the better the discount that you get?---Yes.

And it then says in the third point:

20 *In isolation, fees for life cycle options would be in concern territory. However, focusing on member outcomes the most important part of the scale test is investment performance with AMP performing at the top of the industry for several of the younger cohorts.*

?---That's correct, yes.

25 And that, though, is referring, is it, to investment performance before or after the effect of fees, or you're not sure?---I'm not sure in that analysis. I think it's before but I'm not sure.

30 And is it fair to say that by this time, with the CPI return targets having been decreased for a number of products over a number of years, that AMP Capital was now able to consistently hit most of the return targets?---Yes, I believe so.

All right. I tender that document, Commissioner.

35 THE COMMISSIONER: ASL and NM board papers 6 December '17, AMP.6000.0128.8032, exhibit 5.289.

40 **EXHIBIT #5.289 ASL AND NM BOARD PAPERS 6 DECEMBER '17
(AMP.6000.0128.8032)**

MR HODGE: And then once we get to July of 2018 - - ?---Yes.

45 - - - the board is then coming to consider the question of reducing fees?---That's correct, yes.

And if we bring up AMP.6000.0233.0172, and go over to page .0174. And we see these are the board papers for a meeting on 25 July 2018?---That's correct, yes.

5 And then if we go over to page .0180. So we see this is a paper from the senior manager of trustee governance to the directors of the trustee boards?---That's correct, yes.

And does the senior manager of trustee governance report to you?---Yes, she does.

10 And so she has prepared a paper recommending that the board – the trustee boards note a memorandum in relation to the proposed reduction of fees?---Yes, and normal practice for the trustee services team is for each proposal that goes to the trustee board for approval, we would separately look at that and form views as to whether that's something they should approve or not.

15 And then there's a – and then was there also a – I will bring you then to the next relevant page, which is .0182. This is a paper that is being sent by the director of superannuation retirement and investments to the board?---Yes, that's correct.

20 And this is actually proposing changes to or reductions in the MySuper pricing?---Indeed it is.

And the board is being asked to approve these changes?---Yes, it is.

25 But ultimately, is it the case that it will need to be approved by some other part of the AMP business before the changes can take effect?---Yes.

30 What is the other part of the business that will need to approve it?---So the AMP Life company's actuaries need to look at it and ensure that it doesn't cause any issues for the life company because these are life policies and the AMP Limited board, but should there be any concern around that not occurring I would suggest that there may be a call from the trustee chairman to the board of AMP Limited. So it's – it's a case of because of the delegations are in place and the impact that this had on the profitability of the group, it is required to go up to the AMP Limited board because
35 it's a large change. But we certainly weren't expecting them to decline to do that.

40 Just so I make sure I've understood, it's not the – it's not the board of AMP Life that needs to approve it, it's the board of AMP Limited, or effectively is that the same board anyway?---It may for something of this size be both.

They might even have the same board, do they, AMP Life?---They meet concurrently. They do have different boards but they meet concurrently.

45 All right. Both of those boards or at least at their concurrent meeting they will need to approve the pricing change in order for it to occur?---Yes, they would because of the size of it.

If you then go back a page to .0181, we see the explanation this is still from Ms – is Previtara?---Previtara.

Previtara. Her paper explaining what has prompted this which is that:

5

APRA wrote to the trustees in October 2017 highlighting that based on their analysis the Super Directions fund generic MySuper offer had high costs per member, high operating costs and net outflows. High costs per member and net outflows are observed for the SST generic MySuper offer. Conversations with APRA in respect of these two offers continued over the latter part of 2017 and throughout 2018.

10

?---That's correct, yes.

15

And you were involved in those conversations?---Yes, I was and additional conversations on this matter.

Sorry, you were involved - - ?---Conversations with APRA.

20

Yes?---And conversations with the product team on this matter.

I see. You needed to speak to the product team about whether the product team could reduce the costs of the product?---I would have been advocating for that occurring.

25

Yes. You were pushing for the cost to go down?---That's the case, yes.

But ultimately, you're dependent upon what the product team will do to determine whether there are going to be a change in costs?---Yes, but the – I agree but there are also escalation points available. So if we were not getting to this conclusion, we would continue to put the pressure on to reach this conclusion.

30

And is that because by now APRA is showing a lot of attention to what is going on with AMPs pricing?---The APRA consideration would be a factor but it was also my own view.

35

And how long had you held that view for?---Quite some time.

Years?---I would certainly have been actively advocating for the change throughout 2017.

40

And do you think it says anything about the position of the trustee within the AMP Group that you have been advocating for this change of position since 2017 or throughout 2017 and it is only happening now?---It could but I will certainly continue to do that. I think if it hadn't occurred that would say more.

45

I tender that document – Commissioner, that has already been tendered.

THE COMMISSIONER: Yes.

MR HOLLO: Part of it hasn't.

5 MR HODGE: I'm sorry, it has apparently only been tendered in part. I tender the entire document, Commissioner.

THE COMMISSIONER: Exhibit 5.290 ASL and NM Super board papers, 25 July '18, AMP.6000.0233.0172.
10

EXHIBIT #5.290 ASL AND NM SUPER BOARD PAPERS DATED 25/07/2018 (AMP.6000.0233.0172)

15 MR HODGE: Now, one of the other issues that has been raised by APRA in relation to the trustees is the visibility that the trustee has over the advice business?---Yes, that's correct.

20 And - - -

THE COMMISSIONER: Just before you go into that topic might I return to the topic we've just been - - -

25 MR HODGE: Yes, Commissioner.

THE COMMISSIONER: - - - discussing about the resetting of fees in respect of MySuper. There was reference in one of the documents to what was described as the net member experience. Do you recall that reference?---Yes, I think so.

30 That is to say, a reference to what the member would receive by way of return net of all outlays of any kind?---Yes.

Is that right?---Yes.

35 Is the trustee now given any information about the net member experience in respect of any products?---We receive information about the net member experience for MySuper products, Commissioner.

40 And for how long has that been provided to the board of the trustee?---That has been coming through the MySuper scale test each year since MySuper started, with 2017 having been the fourth year.

45 I'm sorry, can you repeat your answer. I'm not quite sure I heard it accurately?---So the main way that the trustee board receives information on a net member outcome is around the MySuper options. And that comes through the annual MySuper scale test.

Yes?---We are, however, strengthening our reporting in that regard.

And it is the fact, is it, that the re-pricing of MySuper requires a decision of the holding company board?---Yes, due to the size of it.

5

Not just due to the size of it, but because of the impact on the profitability of the Group as a whole?---That's correct, yes.

Yes. Mr Hodge.

10

MR HODGE: Thank you, Commissioner.

Could we bring up APRA.0004.0001.6606. Sorry, I have jumped ahead. What I wanted to bring up APRA.0004.0001.4047. This was a letter you received from APRA, Ms Sansom, on 7 April 2017?---Yes, it is.

15

If you go to page 4051. This is where APRA is setting out some of the matters that it has noted during its review of the operation of the trustee?---Yes, that's correct.

20 And you see in item 4, Business Monitoring Model – Distribution?---Yes.

And it's explained in the second paragraph:

APRA's observation which is AMP Super places reliance on AMP advice and AMP Life to monitor adviser activities and to manage the associated risks of distribution of superannuation products.

25

?---Yes, that's correct.

30 Continuing:

AMP Super does not have visibility of the advisers who direct members to invest in their superannuation products or if the strategies for members are appropriate.

35

?---That's correct, yes.

Do you know – or as I understand it, what was proposed was that AMP would make changes in order to address this issue?---Yes, that's correct.

40

And have those changes been made?---We've made changes in part, but we've got further changes that we would like to make and will be implementing.

And is it the case that AMP Super now has some visibility over the conduct of advisers?---We're getting increased visibility, but one of the things we're looking to take into account is the different perspectives from if you have a financial adviser they're looking at your whole financial situation one on one, if you like, while for the

45

superannuation trustees, what we're looking at is cohorts of members in aggregate. So there will always be a limit to which the superannuation trustee perspective can actually add value but we're certainly increasing our interest in the advice component.

5

Is an issue for the trustee the extent to which it is receiving adequate and accurate reporting from the AMP Advice or AMP Life business about issues that arise with respect to the advisers?---Yes. So I think sometimes when advice looks at a particular issue, they will be looking at it through a purely advice lens, not necessarily a product lens. So it may be that should there have been an issue with a particular adviser, the impact of that issue may have been felt over a number of products, not purely superannuation products. If that makes sense.

10

Can I perhaps deal with a more specific issue to see if we can tease this out. As you know, there was an issue in relation to the BOLR pool and the deduction of adviser service fees in respect of members who did not have advisers linked to them any more?---Yes, I'm aware of that.

15

And some of the members within the BOLR pool were members who had products issued by one or both of the superannuation trustees?---That's correct, yes.

20

And there was at some stage reporting back to the trustee about the fact that a notification of breach had been given to ASIC concerning this?---That's correct, yes.

25

But is what happened this: that the trustee was told that the issue was closed in the second quarter of 2017?---Yes, I believe that's the case for the administration component of that issue.

30

And when was the trustee first told about the second stage in relation to that issue, which was that the maintaining of the continued deduction of adviser service fees was intentional?---It would have heard about that in hearing 2 of the Royal Commission.

35

So the first time the trustee knew about what its advice business had been deliberately doing was during or after round 2 of the Royal Commission?---Yes. So my understanding is that the matters discussed in the hearing 2 were the subject to confidential investigations, and it's my expectations that when those investigations have drawn a conclusion, that formal notification of the trustee board would have occurred. But at the point of hearing block number 2, the conclusions had not been finalised. So while we didn't hear about it before, I have no reason to believe that we wouldn't have been formally informed.

40

At some stage?---In – yes, at the appropriate time, I believe.

45

And after round 2 of the hearings of the Royal Commission, did the trustee board then seek information about what had occurred?---Yes, it did.

And was it provided with information?---Yes, it was.

I see. And your expectation is otherwise but for the public attention, it would have been told, but at some time in the future?---I believe so, yes.

5

All right?---I have no reason to believe otherwise.

I'm sorry, Commissioner, I tender that letter.

10 THE COMMISSIONER: Letter from APRA to Sansom, 7 April '17,
APRA.0004.0001.4047, exhibit 5.291.

15 **EXHIBIT #5.291 LETTER FROM APRA TO SANSOM DATED 07/04/2017
(APRA.0004.0001.4047)**

MR HODGE: Now, relatively recently, that is in June of 2018, there has been a
20 notice of breach given to APRA and also to ASIC in relation to AMP Flexible within
the ART?---Yes, I believe so.

Can we bring up AMP.6000.0175.1845. This is a letter dated 26 June 2018 from
AMP to APRA and ASIC?---That's correct, yes.

25 And if we go over the page to .1846, it's signed off by Mr Clark, the head of product
management of AMP Superannuation, Retirement and Investments?---That's correct,
yes.

Mr Clark, does he report to you?---No, he does not.

30

Do you report to him?---No, I do not.

Does he report to the board?---He regularly attends board meetings and reports to the
board, yes, in that way but he doesn't have a hard line reporting line to the board.

35

And so he seems to be signing the notification of breach which concerns the
continued charging of product service fees after a member had ceased employment
with an employer?---Yes.

40 And he's saying that has arisen from a query received on 24 April 2018 from an
adviser?---Yes, I believe so.

This notification, is this something that you had seen before you started preparing to
45 give evidence?---Yes, I would have done. So the way this would work in practice
within the organisation is when there is a problem, it's registered as an incident,
reviewed by a across business incident working group which is run out of the
enterprise risk management function and then anything that's deemed to be

5 potentially reportable goes to a breach review committee. And either myself or a member of my team attend that breach review committee, discuss the matter in hand, and then are involved in the determination of whether it's a reportable breach or not. So I didn't attend the breach review committee for this particular item. However, a member of my team did.

And then they would have come back and told you about it?---Yes.

10 And when does the board find out about it, if at all?---So the board would typically find out about something of this nature through the exception reporting through a mechanism we use called the business monitoring model.

15 And would this trigger an exception under the business monitoring model?---Yes, it would trigger an exception because the compensation required exceeds \$100,000 in aggregate.

20 And in terms of who is responsible, that is, what part of the business is responsible for having caused plan service fees to be deducted from members after they have left employment, where does responsibility lie for that?---I'm not across the detail of how this has occurred but it may sit in several areas.

25 But in any event, not with the trustee itself, because the trustee has passed all control over to some other entity?---Well, the trustee has outsourced the day-to-day operation of its funds and then monitors the activity around that.

I tender that document, Commissioner.

30 THE COMMISSIONER: AMP Superannuation breach report, 26 June '18, AMP.6000.0175.1845, exhibit 5.292.

EXHIBIT #5.292 AMP SUPERANNUATION BREACH REPORT DATED 26/06/2018 (AMP.6000.0175.1845)

35 MR HODGE: And then can we bring up AMP.6000.0005.8021: this is a licensee incidents panel document?---Yes.

40 Do you attend the licensee incidents panel?---No, I do not. So the licensee is the advice licensees.

Is this a document you've seen before?---I've seen it as it was tendered but I've only glanced through it.

45 I see. In the course of preparing to give evidence, you - - -?---Yes.

- - - had the opportunity to look at it?---I wouldn't ordinarily have seen it, no.

Okay. And you see the incident is Corporate Super Planner Servicing Fee – MySuper?---Yes.

5 And are you able, based on your observation – or your opportunity to look at it before you gave evidence, able to tell us whether or not this is the same incident or a different incident from the one that was reported to APRA and ASIC in June?---I'm not able to say. I would need to take both documents away and do some research and speak to my colleagues.

10 I see. I tender this document, Commissioner.

THE COMMISSIONER: Licensee incidents panel agenda, 28 August '17, AMP.6000.0005.8021, exhibit 5.293.

15

EXHIBIT #5.293 LICENSEE INCIDENTS PANEL AGENDA, 28 AUGUST '17 (AMP.6000.0005.8021)

20 MR HODGE: Now, you've given evidence, Ms Sansom, in relation to cash performance?---Yes, I have.

25 And we've had the opportunity already to hear some evidence from Mr Allert about that. I just wanted to clarify a few things with you. Can we bring up Ms Sansom's statement, which is AMP.6000.0245.0127. And then if we go to page .0172 of that statement. One of the things that the Commission asked you to do, or asked AMP to do was to explain the composition of cash assets?---Yes, that's correct.

30 And we were just hoping you could help us to understand a couple of aspects of this. Do you see in subparagraph (b) to paragraph 165 there's a reference to:

Cash/cash equivalent and other with guarantee.

35 ?---Yes, that's correct.

And for AMP Cash Plus and AMP Secure Cash, the lowest credit rating of the assets comprising cash is BBB plus?---Yes.

40 Do you know what sort of assets that would be then that are being described as cash?---Other than the explanations given in the witness statement, I wouldn't, sorry.

I see. You're reliant on information - - -?---I'm relying - - -

45 - - - that was provided by others?---Yes, absolutely.

So the limit of the explanation at the top of the page:

Cash/cash equivalents and other with guarantee these investment options will have exposures to cash or cash-like investments and may also hold other fixed interest securities for example mortgage-backed securities and corporate debt.

5 ?---That's correct.

So in the case of cash/cash equivalents and other with guarantee, the lowest credit rating of whatever assets it is that are pooled and described as cash is BBB plus?---Yes.

10

And for the AMP Capital Wholesale Cash Management Trust the lowest credit rating of the assets that are pooled and described as cash or cash equivalent is BBB minus?---That's correct, yes.

15 And then for cash, cash equivalents and other, this is said to be:

These investment options will have exposures to cash or cash-like investments and may also hold other fixed interest securities, for example mortgage-backed securities and corporate debt.

20

And if we go over the page to .0172, we – the distinction, as we understand it, is (c) are things that are not cash and don't have a capital guarantee. Is that your understanding, the distinction from (b)?---Yes, no guarantee.

25 And in this case, AMP Cash, which is in the SST, that has the lowest credit rating of BBB plus?---Yes, of one of the components of that option.

And do you know whether any decision has been made by AMP as to whether it will continue to describe as "cash" things that are not cash?---I believe there's analysis and a project underway at the moment to review that.

30

I see.

35 THE COMMISSIONER: Sorry, to review that?---Yes, to actually go through and check around all the options that have been described in a cash-like way, as to whether that's appropriate or not.

40 MR HODGE: And what part of the business is undertaking that analysis, do you know?---So there would be investment specialists from AMP Capital and they would also be working with the investment specialists in my team.

And is this an issue that has been specifically raised with AMP by APRA?---I think APRA raised it across the industry, as I understand it.

45 With everybody describing things that are not cash as cash?---Yes, that's my understanding, that there's a variation across the industry. I'm not – we haven't

reached any conclusions, as far as I'm aware, as to whether any of these – the way these things have been described is unfair, but that's certainly being looked at.

5 THE COMMISSIONER: How long do you expect the process to take?---I'm not sure. I don't think it will take long, though.

10 MR HODGE: And I just need to show you a member statement so that you can help us, I hope, to understand a couple of things. Can we bring up AMP.6000.0251.4295. You see this is a member statement dated 14 October 2016?---Yes, that's correct.

And you will see again, Commissioner, I should note there's a redaction over the month and year of birth but there has not been an NPD in that respect so I will indicate the month and year of birth is October 1948?---Yes.

15 This member would be just shy of 70. And you see the net investment earnings for this member is \$3.23 for the year ending 30 June 2016?---That's correct, yes.

20 And if we go to page .4296, we can see this is a member who is invested 100 per cent in cash?---That's correct, yes.

And if we go back to the first page, which is page .4295, we see there's a black bar over somebody under Your Contacts?---Yes.

25 And do you know, is that where the financial adviser and the contact details for the financial adviser is typically named on - - ?---I think it may well be, yes.

30 And then if we go over the page to page .4299 – I'm sorry, 4298, we see here an identification of the fees and costs. Now, we know the net outcome is that the member does make a very small return of \$3.23, which is a net investment rate of return of .02 per cent?---Yes.

35 Would under the compensation proposal that has been approved by the trustees, would this member receive any compensation?---I believe so, yes, but I – I don't want to be too certain about that without having actually specifically analysed that person's situation.

40 Are members being compensated only if they have a negative return or are they being compensated based on some retrospective adjustment of the fees?---I think it's going across all cash options and it's going back – there's a reduction in the administration fee, and then that's being sort of respectively applied back for three years.

45 And then you see under the Transaction Details, that every month this member is having an adviser service fee deducted from the member's account?---Yes, that's correct.

And that's part of an automatic process that the trustee will put in place where it will just automatically debit a member's account and pay a fee to the adviser?---Where a member and an adviser have entered into an agreement, yes.

5 There's a form that gets filled out that has to be signed by the member and the adviser saying that the member will receive a certain percentage?---That's correct, yes.

10 The trustee doesn't monitor the provision of services by the adviser?---No, we don't.

And is it a matter of concern to the trustee or a matter that has been, as far as you're aware, discussed at the level of the board of the trustee as to why a member paying an adviser to advise them in their best interests would be left 100 per cent invested in cash with AMP making either no meaningful or a negative return on that cash?---So without knowing the member's full financial situation, it would be very hard to say whether or not that's appropriate but I would note that the adviser would be bound by their duties under FOFA. But, again, we're only seeing on this statement one component of the member's financial situation. So I don't know what other assets they would have, whether they would have other super funds or anything. All I'm seeing is that superannuation account and that investment in cash.

25 But even – what I'm just struggling with is do you think that there's – it's possible that there is a rational basis upon which a member would knowingly remain invested in cash with AMP over the last three years?---It's possible but I can't form a view.

How could it be possible?---Well, if it's part of a diversified portfolio and they're not looking at this particular option to get investment returns, I don't know.

30 But it's cash. You can invest in cash through another superannuation fund. This member is over – almost 70, this member could just invest in cash. I'm just trying to understand what view, if at all, the trustee has formed as to how this could possibly make sense?---I haven't formed a view.

35 Is it something that the trustee has thought about?---Not at this stage, but as I mentioned, we are enhancing our reporting, and I think cash is definitely one of those topics that will come up in the enhanced reporting.

I tender that document, Commissioner.

40 THE COMMISSIONER: Member statement Super Directions for Business, year ended 30 June '16, AMP.6000.0251.4295, exhibit 5.294.

45 **EXHIBIT #5.294 MEMBER STATEMENT SUPER DIRECTIONS FOR BUSINESS, YEAR ENDED 30 JUNE '16 (AMP.6000.0251.4295)**

MR HODGE: Now, there's another issue that has arisen – or of which the board – I'm sorry, I withdraw that. There is another issue which the trustee has recently been made aware of in relation to a problem with how AMP Capital was charging?---That's correct, yes.

5

And you've explained this in your witness statement?---That's correct, yes.

And this is something that was reported to the trustee first when?---I can't actually recall the date, but quite recently. It didn't go through – wait to go through the normal quarterly reporting process. It was taken up prior to that.

10

And there are two incidents. One is what's referred to as the AMP Capital expense recovery?---That's correct, yes.

15 And the other is the AMP Capital fee rebate incident?---Yes, that's correct.

And could you explain to the Commissioner what the AMP Capital expense recovery incident is?---That relates to a sort of fundamentally a misunderstanding between AMP Capital and the custodian in recovering certain fees from particular investment options and the recovery of those fees should not have taken place for any of the AMP policyholders or member investments in those options. It should have only been – come out of another area, but instead of being pro rata, split up between the two different definitions, it was applied evenly across all.

20

25 With the consequence that higher fees were charged than were permitted to be charged under the relevant contracts?---Yes, that's correct. There were fees charged that should have not been.

And what is the estimated value of those fees for the AMP Capital expense issue?---So the current analysis, as I understand it, is – it works out as a dollar per member, but in aggregate it's around 3 to 3 and a half million.

30

And then there was a second issue, which was the AMP Capital fee rebate incident?---Yes, that's correct.

35

And could you explain to the Commissioner the nature of that issue?---So with some underlying investments into things like property and infrastructure, any fees that were charged on the underlying basis should have been rebated back, and that did not occur.

40

And what was the value of that error?---So on a sort of customer by customer or member by member basis, it's around 6 to 8 dollars per person but in aggregate it's over 20 million.

45 THE COMMISSIONER: Sorry, how much in aggregate?---I think it's over 20 million. I could flick to my statement and just get the current number. Around 23 million.

MR HODGE: And the issue is, just to be clear, that instead of rebating back or passing on certain rebates, they were retained by AMP Capital. Is that right?---Well, it may be with the underlying investment manager. I'm not quite sure. But anyway, regardless of that they should not have been charged to the members.

5

And that was reported by – was it AMP Life over to the trustees in – was it about May of this year?---That seems about right. So there was a discussion at the Group Investment Committee and the Group Investment Committee requested that the trustee board be made aware at the earliest possible convenience.

10

And do you know when AMP Capital had become aware of the – the issue?---So my understanding for the expense recovery issue was that they had initially thought it was for a narrower product reported it to ASIC back in the middle of 2017 but the view at the time, I think, was that they hadn't – their investigations hadn't shown that it had impacted superannuation members at that point, as I understand it.

15

I see. Perhaps if we bring up AMP.6000.0015.0170. This might be what you are thinking about the breach notice to ASIC?---Yes, I think so.

20

And this is dated 3 August 2017?---Yes.

And the point I think you're making is, in the middle of the page under Background:

25

The REs operate a number of registered managed investment schemes, some of which are offered to retail clients on AMPs flexible lifetime investments and generations wrap platforms.

?---Yes. And they're not superannuation products.

30

And then subsequently it was identified that these issues or that this issue extended to superannuation products?---That's correct, yes.

And it also was identified that there was this fee rebate issue?---Yes, that's correct.

35

And do you know when it was first determined by AMP Capital that it extended to the superannuation products?---I'm not sure, no.

40

Are you able to explain what the connection is between the discovery of this issue and RG97 coming into effect in October of last year?---I believe some of the analysis that they did to implement RG97 demonstrated that this was the case as they were looking at indirect costs. They found that there were some incorrect allocation of indirect costs.

45

Does it follow from what you are saying that the trustee or the trustees do not have any visibility over the indirect costs beyond what they are explicitly told by either AMP Life or AMP Capital?---That would be the case, yes.

Hence, the only way in which they could find out about these issues was by this information being passed from AMP Capital to AMP Life to the Group Investment Committee, and then on to them?---Yes, the level of monitoring we do wouldn't pick up something that would impact a member at such a small level.

5

And as it turned out, how long had this issue with AMP Capital's charging of fees been going on?---Quite some time. A number of years.

How – at the moment, how far back is it thought to extend?---I believe it's around about 2014.

10

I see?---But I'm remembering rather than knowing.

I tender that document, Commissioner.

15

THE COMMISSIONER: AMP Capital breach notice to ASIC, 3 August '17, AMP.6000.0015.0710, exhibit 5.295.

20 **EXHIBIT #5.295 AMP CAPITAL BREACH NOTICE TO ASIC DATED 03/08/2017 (AMP.6000.0015.0710)**

MR HODGE: Commissioner, I don't have any further questions for Ms Sansom.

25

THE COMMISSIONER: Ms Sansom, just this last matter you've raised or has been raised with you, do you consider that the trustee is in a position to fulfil its obligations in light of the information that underpins that breach notice?---Broadly, I believe so, but we need to keep working with the parties that we work with to strengthen controls and apply further checks so we continually evolve what we do and we will continue to do that from this point onwards.

30

And how can you do that with a staff of 15?---Through the outsourcing arrangements that we have in place, the outsource providers are required to act in accordance with trustee obligations.

35

No doubt the contract provides that the outsourced – the providers of outsourced information should act properly. Is the trustee in a position where it is able to determine whether the entities to which the functions are outsourced are in truth performing those functions as agreed?---To an extent, but it's not a perfect system.

40

To any extent, Ms Sansom, rather than to some extent, is it able to any extent to determine whether the entity to which the task is outsourced is performing its functions according to contract?---Yes, I believe so.

45

How?---Through the regular reporting it receives and the attendance of executives at its meeting, and also should anything go wrong, as in the case of these two incidents, the AMP entities are required to remediate the members.

5 The information flow is controlled wholly by the entities to which the tasks are outsourced. Is that right?---Yes, although we receive information from multiple sources so we do a degree of cross-checking.

Yes. Mr Hodge.

10 MR HODGE: Nothing from that, Commissioner.

THE COMMISSIONER: Mr Hollo.

15 <RE-EXAMINATION BY MR HOLLO [3.55 pm]

MR HOLLO: Ms Sansom, in relation to the capital rebate incident - - -?---Yes.

20 - - - that Mr Hodge asked you about, do you know what effect per member that incident is expected - - -?---The rebate.

The rebate?---Between 6 to 8 dollars per member.

25 Thank you. You were asked some questions about the ADA transfers?---Yes, that's correct.

30 And you indicated in your answers, although that the planning had occurred prior to your coming into the position that you're currently in - - -?---Yes.

- - - that you had read some board papers?---I did, yes.

35 And that allowed you to gain some understanding of the matters that were taken into account by the trustees?---Yes, that's correct.

And some of the complexities?---Yes.

40 Could I have up on the screen AMP.6000.0128.2284. If you could go to 2356, please. Blow up the top of the page, the first two paragraphs. Thank you. You will see that the memorandum which is prepared in March 2015 describes the ADA transitions in the second paragraph. And the complexity involved in asset movements and the complexities include but are not limited to, and then there are four bullet points?---Yes, that's correct.

45 Were these the sorts of complexities that you had in mind?---Yes, these are.

I tender that document.

THE COMMISSIONER: AMP Super and NM Super board papers, 24 March '15, AMP.6000.0128.2284, exhibit 5.296.

5

EXHIBIT #5.296 AMP SUPER AND NM SUPER BOARD PAPERS, 24 MARCH '15 (AMP.6000.0128.2284)

10

THE COMMISSIONER: Just while that document is up, Mr Hollo, if I may, does that paper record, to your knowledge, Ms Sansom, anything about the planned schedule coinciding with the financial interests of planners and the financial interests of AMP?---Not to my knowledge, no.

15

But the board is told of the difficulties. Is that right?---Of the difficulties in executing the transitions, yes.

20

All right. And its attention is not drawn to commercial considerations that affect others?---It doesn't appear so, no.

Yes. Do go on, Mr Hollo.

25

MR HOLLO: You were asked some questions in connection with an APRA letter about whether or not the trustees had implemented increased visibility of the advice business. And you mentioned that some changes had been made?---Yes, that's correct.

30

Can you describe what those changes are?---So one of the changes is to have a greater deal of inquiry and oversight into advice related incidents and breaches, and one of the mechanisms that we've sought to do is to bring all advice things – all advice related matters together so we can better identify themes.

35

And finally, can I take you back to the two Capital related incidents that Mr Hodge asked you about towards the conclusion of - - -?---Yes.

40

- - - your examination. Can you describe whether – could I ask you is this any remediation planned in relation to those matters by AMP?---Yes. Both matters will be fully remediated by AMP.

45

And when do you expect that to start?---I think it is starting quite soon. I can't recall the exact date.

Thank you. No further questions.

45

THE COMMISSIONER: Thank you, Mr Hollo. Mr Hodge. Is there anything arising out of that?

MR HODGE: Nothing, thank you, Commissioner.

THE COMMISSIONER: No, thank you, Ms Sansom.

5 MR HOLLO: Might Ms Sansom be excused.

THE COMMISSIONER: Yes, you may step down and you are excused from further attendance, Ms Sansom?---Thank you, Commissioner.

10

<THE WITNESS WITHDREW

[4.00 pm]

THE COMMISSIONER: Mr Hodge.

15

MR HODGE: Commissioner, that was the last witness for today. So - - -

THE COMMISSIONER: We get an early mark, do we, Mr - - -

20

MR HODGE: Today counts as an early mark in round 5.

THE COMMISSIONER: 9.30 tomorrow - - -

MR HODGE: Thank you, Commissioner.

25

THE COMMISSIONER: - - - Mr Hodge. 9.30 tomorrow.

MATTER ADJOURNED at 4.00 pm UNTIL FRIDAY, 17 AUGUST 2018

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