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TRANSCRIPT OF PROCEEDINGS

O/N H-884953

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

9.49 AM, TUESDAY, 17 APRIL 2018

Continued from 16.4.18

DAY 12

**MS R. ORR QC appears with MR M. HODGE QC and MR M. COSTELLO Counsel
Assisting with MR M. HOSKING**

MR P. CRUTCHFIELD QC appears with MR R. HOLLO SC for AMP Limited

MR C. SCERRI QC appears with MR S. GOODMAN SC for CBA

THE COMMISSIONER: I'm sorry we're a little delayed, ladies and gentlemen. It's not only retailers that have IT issues. Mr Regan, could you come back into the witness box, please.

5

<ANTHONY GEORGE REGAN, ON FORMER AFFIRMATION [9.49 am]

<CROSS-EXAMINATION BY MR HODGE

10

THE COMMISSIONER: Do sit down, Mr Regan?---Thank you.

Yes, Mr Hodge.

15

MR HODGE: Thank you, Commissioner. Could we bring up document AMP.1000.0001.4754. This is now exhibit 2.23. Thank you. You will recall this document, Mr Regan. It was the one I was fumbling with late yesterday afternoon. Could we go to page 4 of the document which is .4756. And – sorry, page 4 of the document. Thank you. Could we blow up the section beginning “6963 formerly advised clients” together with the following three paragraphs. Now, you see, Mr Regan, that this says:

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25

No affected client, during the period of the breach to which this notice relates, had an entitlement to receive ongoing services. All arrangements in place before any client became an affected client had been terminated.

?---Yes.

30

And that was incorrect, wasn't it?---Could you just point me to the document, Mr Hodge, the – is that document a part of the exhibits?

35

You – sorry, you understand, Mr Regan, that at the time that this correspondence was being sent by AMP to ASIC, a position that was being adopted by AMP was that the service arrangements with all clients were terminated upon them coming into the BOLR pool. Are you aware of that?---Yes, where the fees were involved, that's correct.

40

Yes. And we – if we bring up page 5 of the document, which is .4759. I beg your pardon, page 6 of the document, which is .4759. And you see the paragraph – if we blow up which is “Under the BOLR arrangements”. Thank you:

45

Under the BOLR arrangements once customer register rights are acquired, the AMP Advice back office team issues instructions to the AMP product issuer to terminate the fee arrangement. For fees collected on products issued by

external product providers, clients were asked to notify that provider to terminate the fee deduction.

Then if you take that paragraph back down and blow up the paragraph beginning:

5

Selling advisers of AMPFP were required, as part of the BOLR process, to issue to customers a letter informing the customer of the planned exit of the adviser, that the licensee would cancel fee arrangements on AMP-issued products and that the customer was to contact external providers and instruct them to turn off ongoing fees.

10

?---Mmm.

And so if we break this down, the position that was being taken at this time by AMP in its correspondence to ASIC was that when the planners sold their books of clients to AMP under BOLR, the ongoing fee arrangements would terminate?---Yes.

15

This is – I’m sorry, this is as at the second half of 2015?---Yes, that’s why I was just wanting to know is that – is this a document that’s part of the exhibits?

20

Yes, it was tendered – this is the document you were looking at yesterday afternoon, Mr Regan?---Yes, is it – is it in the exhibits, is my question?

In your exhibits?---Yes.

25

No, Mr Regan?---Thank you. Thank you.

Perhaps if you bring that back down?---Yes.

And go to the first page, we can see what the document is again?---Thank you.

30

It’s a letter sent in response to a section 912C notice by ASIC on September 2015 with a due date of 17 September 2015. And that was then adjusted for a response time. And for whatever reason, this letter is not dated but it’s in response to the - - -?---Yes.

35

- - - September 2015 notice?---Could I just – could it be made a little larger?

Sure?---Thank you.

40

Which part would you like larger?---That’s just fine. So has the date been redacted or is it just not there.

It appears to not be there but it must have been sent on the 15th – or about 15 October 2015?---I – I will take the document on its face.

45

You know it's referred to in the Clayton Utz report?---Yes, I don't have that to hand as we look at it, no.

5 All right. Well, let's put the document aside for one moment. Are you aware that in the second half of 2015, AMP was taking the position with ASIC that when clients were sold to the BOLR pool, their ongoing fee arrangements were terminated?---Yes, I think that's correct, Mr Hodge.

10 And this document, as we've seen, makes that representation. You agree?---Yes, I agree.

And that representation was false?---Yes, I think that's correct.

15 Thank you. And this, in our count, is the 11th false or misleading statement by AMP to ASIC in respect of fees for no service. Do you agree?---Yes.

Can we take that document down, and now bring up AMP.6000.0010.0008, which is also tab 35 to Mr Regan's - - -?---Thank you, Mr Hodge.

20 - - - statement. This is a letter of 12 June 2015. It's a letter from ASIC to Mr Caprioli. And we've spoken already about what the position was with Mr Caprioli. Can we blow up the section in the middle of that first page, which is:

25 *Examples of misconduct currently being investigated.*

And you will see, Mr Regan, that the first type of example listed is:

30 *Licensees charging clients for financial advice services such as annual advice reviews, generally under the clients' service agreements with their financial advisers where the advice was not provided.*

Do you see that?---Yes.

35 Then if we take that down and can we bring up the next page which ends in .0009. And see what Mr Caprioli was asked to do by ASIC – and this is in the second paragraph was:

40 *...provide ASIC with a comprehensive statement that sets out whether the conduct referred to in paragraph 1 above, or conduct which had a similar client impact exists or has existed within AFS licences currently part of the AMP Group that provide personal advice to retail clients.*

45 That was what he was asked to do. You've seen this letter before, obviously?---Yes, I have.

Because it was exhibited to your statement?---Yes. Yes.

Can we take that down and now bring up AMP.6000.0003.8310. So this is an external audit undertaken by PwC for AMP. Have you seen this before?---Yes, I have.

5 And you will see it's dated March 2015?---Yes, it is.

Thank you. Now, there's a few parts of this document that I want to ask you about. The first is – if we go to page 8312, which is the second page of the document?---And I think it's in this – could you tell me which tab?

10

I wasn't aware that it was in your folder, Mr Regan?---Not in this one.

But if it is - - -?---Apologies.

15 - - - somebody will tell me?---Thank you.

You will see that the external audit report was provided to Mr Salter, the group general counsel?---Yes.

20 And the external audit report raises a number of issues about, effectively, compliance and monitoring of risks in AMP. Do you agree?---Yes.

And one of the issues that it raises is, if we blow up the second bullet point – this is even just part of the summary which begins “process”. That it explains that:

25

There are some key risk management frameworks and processes that are either not operating as designed or require updating to ensure that they meet ASICs expectations and industry better practice. Examples of these include the three lines of defence framework, breach reporting and complaints management processes as well as the techniques that are being used to monitor the adviser network.

30

Are you aware of what steps were taken in response to this report to address these issues?---Obviously, I wasn't involved in the business at that time. I know there was some work done, but I can't give you the detail of that, Mr Hodge.

35

All right. And then can we bring up page (iv) of the executive summary. It ends in .8319. Thank you. And can we blow up the second last and third last bullet points on that page. So the third last begins:

40

Incidents at AMP tend to be self-reported.

Thank you. So one of the issues raised by the external auditors specifically was that – and I quote:

45

Incidents at AMP tend to be self-reported or identified serendipitously. The licensees are not taking proactive steps to identify trends and indicators that

point to potential breaches. Furthermore, root-cause analysis of incidents and breaches that are identified is not conducted which means that potential systemic issues are not identified and similar issues are likely to reoccur as rectification is not fed into continuous improvement of processes training and behaviour. Better industry practice incorporates both of these elements into their incident and breach frameworks.

?---Yes.

10 You have obviously looked at this before. Have you turned your mind to find out what steps, if any, were taken by AMP following this report to address the lack of any root cause analysis?---I am not familiar with the work that was done before my arrival but certainly as I indicated to you yesterday there's a program afoot to deal with a lot of this type of analysis.

15 All right. Then if we go back a page to the page ending .8318 and blow up the last dot point on that page. One of the specific issues raised by the external auditors was the 3 LOD, which is the three lines of defence model:

20 *...is considered by ASIC to be the key governance, risk and control framework for effectively managing risk, however it does not appear to be operating consistently and in the manner we would expect within AMP.*

25 Are you aware of what steps were taken immediately following that report to address the inadequacies in the three lines of defence model?---No, I am not.

All right. And then can we go to page 38 of that document, which is the page ending .8353. And can we blow up point number 3 of the Recommendations. Which begins – thank you. So that the third recommendation made by the external auditors to AMP was:

30 *To conduct root cause analysis of all incidents and breaches to determine whether they are indicative of systemic issues and so that lessons learned can be used for continuous business improvement.*

35 ?---Mmm.

40 Are you aware of what steps if any were taken to conduct root cause analysis of all incidents?---Not firsthand, Mr Hodge.

All right. Do you agree with me that on no view of this report could it be said that PwC were saying that there were no systemic issues?---Not on my reading of that.

45 Thank you. Can I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 2.24 will be PwC, AMP financial advice review, 30 March 2015, AMP.6000.0003.8310.

**EXHIBIT #2.24 PWC AMP FINANCIAL ADVICE REVIEW DATED
30/03/2015 (AMP.6000.0003.8310)**

5 MR HODGE: Can we bring up AMP.1000.0001.0921. This is a letter dated 23
June 2015 from AMP to ASIC. You've seen this document before?---Yes, I have.

And this document is in response to that letter that we looked at two documents ago,
the letter of 12 June 2015 from ASIC to AMP asking – or to Mr Caprioli of AMP
10 asking for information?---That's correct.

Now, can we blow up the last two paragraphs, and you see the last sentence says
“We confirm that the audit” – I'm sorry, I should go back a step. You see the second
last paragraph refers to a recent audit conducted by PwC?---Yes.

15

And the last sentence says:

*We confirm that the audit program has not identified any systemic issues
regarding the provision of ongoing services by AMP advisers.*

20

?---Yes.

And you agree that statement is false?---Yes, and I think that's a finding in the
Clayton Utz report as well.

25

Do you understand – or have you made any investigations to understand why this
was said?---I don't know firsthand why it was said, no.

Do you think it reflects a failure on the part of the senior management at AMP at the
time to understand the audit report by PwC?---I'm not sure what they turned their
minds to. I mean, I can't know that, but I do appreciate the point that you're making
and the finding.

30

You see, in a strict way, of course, this is true, that they haven't themselves identified
any systemic issues because that wasn't what they were undertaking at all?---PwC
is - - -

35

Yes?--- - - - what you're referring to? Yes.

They weren't themselves undertaking the systemic audit. They were saying, “you
need to undertake” or “you don't undertake any root cause analysis in order to
determine whether there are systemic issues”?---Yes, could you go back to that
section of the document. I think that's my – my recollection but I would just like to
reread it if that's okay.

45

Yes, can we put that on one side and on the other side bring up
AMP.6000.0003.8312 at page 8353. I am sorry, I will repeat that. It's

AMP.6000.0003.8310 at 8353. Thank you. Then if we go to page 8353. Do you see what PwC says is:

5 *Root cause analysis of incidents and breaches that are identified is not conducted which means that potential systemic issues are not identified and similar issues are likely to reoccur as rectification is not fed into continuous improvement of processes.*

10 ?---Yes.

 And they recommend:

15 *Conduct a root cause analysis of all incidents and breaches to determine whether they are indicative of systemic issues.*

 And what seems to have been drawn from that by the author of the letter to ASIC is, well, PwC hasn't found any systemic issues?---Mmm.

20 Do you agree?---I agree.

 And my question is: have you turned your mind to the question of whether this reflects a complete failure to understand what it is that PwC was saying or whether it reflects a deliberate attempt to mislead ASIC?---I'm not certain of that, Mr Hodge. Obviously, I wasn't involved in it at the time. I – I have asked some questions in relation to that letter, and, as I understand it, Mr Caprioli wasn't the author of the letter, and it was, as I understand it, authored by somebody else and then signed by him.

30 I see. And does that mean from the perspective of AMP, that if a member of the GLT signs a letter that somebody else has written it for them, that they're not responsible for the content of it?---No, it just means that there's a process there where more than one person are often involved in the creation of these documents.

35 Yes. But surely the person who signs the document at AMP is expected to be satisfied that whatever it is that they are saying is true?---That's correct. They're certainly responsible for the letter.

 All right. I tender that letter, Commissioner.

40 THE COMMISSIONER: Will be exhibit 2.25, letter AMP to ASIC 23 June 2015, AMP.1000.0001.0921.

45 **EXHIBIT #2.25 LETTER AMP TO ASIC DATED 23/06/2015
(AMP.1000.0001.0921)**

MR HODGE: Actually, can we go to the second page of that letter which is 0922. The first page of the letter, Mr Caprioli, was addressing the issue of fees for no services where it's the adviser who has effectively caused the fee to be paid to the licensee but not provided the service. Do you understand that?---I believe so.

5

And the second part of the letter then is addressing the licensee buy-back arrangements, the BOLR problem. And can we blow up the paragraph under the heading. And you see in the middle of the paragraph it says:

10 *Unlike the ANZ issue, these fees did not relate to providing personal advice or annual advice reviews but to services such as retainer services and other support services to clients.*

?---Yes.

15

And, again, that was false?---Yes, I think that's correct.

Because there had been no determination that the fees did not relate to providing personal advice?---And I think that's what Clayton Utz found.

20

So this letter seems to contain then the, again by my count the 12th and 13th false or misleading statement by AMP to ASIC. Do you agree?---Yes.

Now, if we take that document down and bring up PMA.001.005.4909.

25

THE COMMISSIONER: Sorry, AMP?

MR HODGE: Sorry, it's PMA - - -

30

THE COMMISSIONER: PMA?

MR HODGE: It is PMA.

THE COMMISSIONER: Right.

35

MR CRUTCHFIELD: It might have been loaded at 3 am, Commissioner.

THE COMMISSIONER: Don't go there, Mr Crutchfield. Don't go there. That might have been for a reason.

40

MR HODGE: It's a sigh of relief. This is a chain of emails between a number of employees within AMP?---Yes.

And you've seen this document before?---Yes, I have.

45

All right. Is this one of the documents that caused such consternation in May of 2017?---I couldn't recall that, Mr Hodge.

Can we go to page 4910. If we put this in some contextual context, these are emails being sent in June of 2015. By this time, AMP has already given its first notice of breach to ASIC about the BOLR issues?---Yes, that's correct.

5 But is representing to ASIC, falsely, that it is an administrative error?---At the time of that breach report?

At the time?---Yes, that's correct.

10 Now, if we blow up the email at the bottom of the page from Ms Wolff to various people, Ms Wolff was the registers and transfers manager at AMP at the time?---I am not aware of her exact position but something like that, I believe, was her role.

15 All right. She was being asked about approval to ring-fence a register that was being sold into the BOLR pool?---Yes.

And she explains that:

20 *Maintaining these registers in ring-fenced IDs presents several issues for AMP and we are unable to continue to do this for registers. We need to transfer them and dial down the ongoing fees so that we do not breach ASIC requirements.*

And then goes on to say:

25

Please ensure that when seeking approval from MG –

Who is Mr Guggenheimer, is that right?---That's correct.

30 Continuing –

he acknowledges that by ring-fencing the registers and not having the ongoing fees dialled down that we are in breach of our licence.

35 And – I am sorry I may have asked this already, you have seen this document before, haven't you?---Yes.

This doesn't come as any surprise to you?---No.

40 And then we then go to the next email in time at the top of the page. The relevant employee at AMP then sends an email to Mr Guggenheimer explaining that they're trying to sell top-end fees for service clients in a register, and they need approval to hold the register in a ring fence sales code, and then it says:

45 *It must be noted that this is in breach of our licence as fees are not dialled down. However, this is required to enable the analysis to be completed for on-sale.*

Do you see that?---Yes.

And then if we go to page 4909 and blow up the email at the bottom of the page, Mr Guggenheimer's response is:

5

I am okay for the clients to be quarantined for three weeks to resolve what is being purchased so we do not lose the value of the service fees.

10 Have you, before we see what comes after this, have you personally discussed with Mr Guggenheimer why it was that he was continuing to approve ringfencing even when he was being told by more junior staffers that this was a breach of the licence conditions?---No, that was a matter that was dealt with through Mr Guggenheimer with the Clayton Utz review.

15 All right. And then what follows on from that, if we take that down and blow up the email in the middle of the page, Mr Guggenheimer having given approval to ring fence this particular register, then sends an email to Mr Morgan. What was Mr Morgan's role at the time?---I can't quite recall. His role was in relation to what's

20

All right?---So the head of that function, in effect.

Was he a more junior employee than Mr Guggenheimer?---Yes, but reporting through a different line, I believe, at the time.

25

All right. And who did Mr Morgan, as the head of Licensee Value Management, report to?---I believe that would have been Mr Paff at the time but I can't be entirely certain.

30 All right. And what Mr Guggenheimer emailed Mr Morgan about was to say:

35 *Can you advise what is the revised policy terms relating to explicit service fees and BOLR. It seems from the note below we are writing them down on day 1 which is simply going to exacerbate the P&L issues and risks we are trying to manage.*

?---Yes.

And then if we look at what the response was from Mr Morgan, his response is:

40

That is not the case. I believe Sarah's email was more of a result of our existing issue and she has been directed by Wayne to drive awareness whilst we are still reviewing the end to end process to be in more robust processes for how we can ring fence and ensure that it is earmarked for on sell and/or AMP servicing.

45

As I understand it then, undoubtedly on the face of these emails as at mid-June 2015, Mr Guggenheimer, the managing director of AMP Financial Planning and Mr Morgan, the head of Licensee Value Management, but also every employee who is copied in on one of these chains of emails is aware that AMP is continuing to ring
5 fence registers and keep ongoing fees going, notwithstanding that they know it's in breach of the licence. Is that a fair summary?---Well, to the extent that they're copied on the emails, I accept your point. I don't know, obviously, the degree to which people read those emails.

10 I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 2.26, emails of 12 June 2015 between Morgan, Guggenheimer and others, PMA.001.005.4909.

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EXHIBIT #2.26 EMAILS BETWEEN MORGAN, GUGGENHEIMER AND OTHERS DATED 12/06/2015 (PMA.001.005.4909)

20 MR HODGE: Have you personally considered the question, Mr Regan, of to what extent these emails that we've been looking at reflect the culture of the advice section of AMP?---Yes, I have.

25 And what is the view that you formed?---I think there are reasons to be concerned. I think they show a culture that's not as robust as it should be.

30 When you say "not as robust as it should be", that really understates it, doesn't it?---I think that the culture certainly needs to be reviewed and – and analysed. And we are doing that. In fact, there was a review of the culture done in 2015. But I think the concerns there are obvious.

35 I just want to understand the way in which you perceive it. When you say "not as robust as it should be", what we seem to be seeing is that a conscious decision is made to protect the profitability of AMP at the expense of complying with AMP's licence. Do you agree?---Yes, that's – I believe that's what that shows, yes.

40 And is that type of behaviour what you mean when you say "a culture that is not as robust as it should be"?---I – well, it's clear that we preference the interest of shareholders in that exchange at the expense of clients. And so that is a concern, but I think there are other elements there that are concerning as well. I think there is clearly a lack of clarity in terms of the way in which directions are being given, but also there's a concern about the degree to which things should have been escalated as a result of the issues being identified further down. So they would be three instances, I think, that relate to the cultural question.

45

It's also at the expense of complying with the law?---Absolutely. Absolutely.

And although you say it's preferencing the interests of shareholders, by that, I take it, you mean at least in the short-term of maintaining the profitability of the company at the expense of complying with the law?---Yes, that's correct.

5 Is it in the long-term interests of AMP shareholders for AMP to be maintaining its profitability at the expense of complying with the law?---It is not.

10 Has there been any consideration, as far as you are aware, at the board level of whether this reflects the policies or approach of the board?---I'm not – to the extent that I've been involved in board discussions, the board has reflected a view that is consistent with appropriately treating clients and not preferencing shareholders at client expense or, more particularly, not being in breach of the law in that regard.

15 What about at the GLT level? Has there been a discussion that you've participated in as to whether this conduct reflects the policies or attitudes of the GLT at the time?---As – as of that time, as in - - -

20 Well, you've only been – well, let's break it down. You've been a member of the GLT for several years?---Yes.

You've been a member of the GLT as the member responsible for advice since 1 January 2017?---Yes.

25 This – most of the conduct that we're concerned with predated you becoming responsible for advice?---Yes.

Do you agree? But not all of it? Not all of the conduct predated you becoming the group executive in relation to advice?---I believe it did.

30 Didn't ringfencing continue into 2017?---My understanding was that practice stopped before 2017.

All right?---In fact, I thought it – I can't be certain of that but I thought it had.

35 All right?---Yes.

40 Well, in any event, has there been any discussion that you have participated in at the GLT level – and we will break this down into time periods – first, a discussion pre you becoming the head of advice – I'm sorry, becoming the group executive in relation to advice, as to whether this conduct reflected the culture and priorities being communicated down by the GLT?---Mr Hodge, I can't bring to mind a specific discussion but, certainly, the GLT discussed elements of this matter with the furnishing of the Clayton Utz report. I – I couldn't give you a specific narrative from that, but certainly, having appropriate regard to the law and ensuring that we protect clients' interests, were features of those sorts of discussions.

45

All right. Well, I think you're now talking about a period after you became the group executive for advice, but let's just then focus on that?---Yes.

5 After you became the group executive in relation to advice, have you participated in any discussion at GLT level as to whether this conduct in relation to ringfencing, the 90 day exception, the communications to ASIC, reflected the priorities and policies and approach being communicated down by the GLT to the employees that reported to them?---Can I just be clear with your question, Mr Hodge.

10 Yes?---You're asking was there anything communicated down that would encourage staff to preference interests of shareholders, or breaching the law in support of increasing shareholder return. Is that your question?

15 Well, let's start with that?---Absolutely not, as far as I'm aware.

But more generally, you agree this conduct reflects an approach which is of preferencing the interests of, at least short term, shareholders in terms of profitability over complying with the law or looking after the interests of clients. You agree with that?---Yes.

20 And that's just in relation to the 90 day exception and ringfencing?---Is that your - - -

25 That applies with respect to the 90 day exception and ringfencing. You agree? You agree - - -?---I'm trying to just understand your question. I'm not - - -

You agree in relation to the 90 day exception and ringfencing that what that conduct reflects is preferencing short-term profitability over complying with the law or acting in the interests of clients?---Yes, I think the point I was making before is – is indeed a general point as well. And that is that at no time would we condone preferencing shareholder interests over the – the law or the interests of clients.

30 So this is the type of conduct that the GLT, at least now, disapproves of?---Yes, absolutely.

35 Perhaps if we attempt to examine this in a different way. Have you participated in any discussion at the GLT level as to whether the GLT had sufficiently communicated down to its employees and those that reported to them, that this type of conduct – preferencing short-term profitability over complying with the law and the interests of clients – was frowned upon?---At this time – can we just clarify the time period?

40 Since you became the group executive - - -?---Yes.

45 - - - of advice on 1 January 2017, have you participated in any discussion at all at the GLT level as to whether at any time the GLT has adequately communicated down to those that report to it that conduct that preferences short-term profitability over complying with the law and acting in the interests of clients is inappropriate?---I

can't recall specific discussions, but certainly we've had discussions about understanding what are the relevant cultural issues that arise out of this report, and I think one example in that regard is the risk culture survey and review that's currently being done to understand these issues more fulsomely.

5

And the discussions that you've had about the risk culture, when have they taken place, so far as you can recall?---Off – in relation to this matter or - - -

10 Yes?---There has been a number of discussions, particularly through what's reflected as the GLT subcommittee in relation to this matter which is responsible for sponsoring that culture survey that I alluded to earlier.

15 And did the GLT come to a conclusion about the risk culture at AMP?---That work is just being finalised, I believe. I don't think it's complete as yet.

Have you personally come to a conclusion about the risk culture at AMP?---I have views about elements of the risk culture, yes.

20 All right. What are your views about the risk culture at AMP?---Well, Mr Hodge, I have to say I think there's a number of areas where we need to improve significantly. I think for mine, if you will indulge me – thank you – I think the way I contemplate organisations, I think it starts with culture, it goes to governance, it goes to capability, control systems, processes, but culture is the invisible hand that ensures that people are making the right decisions. And I think it's evident, from some of the things that have flowed through here, that that hasn't happened in all cases. I don't think it's consistent across all of AMP. I don't think it's the case in all matters, but certainly there's areas where the risk culture needs to be improved, and I think that will emerge out of the study that I alluded to earlier.

30 Is one aspect of the risk culture how AMP communicates with the regulator?---Absolutely.

And whether AMP communicates truthfully and frankly with the regulator?---Yes.

35 And have you participated in any discussion as to what the culture is at GLT level in relation to communicating honestly and frankly with the regulator?---Yes.

40 Recently?---I couldn't bring dates to mind, Mr Hodge, but certainly, it's – it has certainly arisen in different conversations.

And what is the view of the GLT about communicating honestly and frankly with the regulator?---Just as you've described it, honestly and frankly.

45 And what about discussions at a board level. Have you participated in any discussions at a board level about - - -?---Yes, I have, yes, and a similar view, and – and most notably through the board committee that's referred to in terms of being the overseeing body in relation to not only this matter, but also the Advice Business

Review Program that is alluded to, where we're looking to deal with the remediation of a lot of these matters.

Is that the Culture and Compliance Committee?---Yes.

5

We will come back - - -?---I didn't want to use the acronym.

I don't think the ACCC would like it at all, Mr Regan?---I'm with you on that, Mr Hodge.

10

Can we bring up the Clayton Utz report, AMP.6000.00038.0001 [erratum: AMP.6000.0010.0440]. This should be tab 3 of Mr Regan's statement.

THE COMMISSIONER: It should be AMP.6000.0038.0001 [erratum: AMP.6000.0010.0440], I think, is it? Yes, I think you might have injected a new zero.

15

MR HODGE: I apologise. If we go to page – I am sorry, go to page ending .0062 [erratum: .0501]. It should be page 62. Now, Clayton Utz have a document that we don't – or appear to have had a document that we don't seem to have a copy of but we can go off what Clayton Utz has quoted. If we blow up page [erratum: paragraph] 167, subparagraph (a). Probably easier to do it off your screen?---Yes, unfortunately the ring binder has suffered an injury, I'm afraid. So I'm having trouble - - -

20

25

THE COMMISSIONER: They always do, Mr Regan?---We will go with your screen, Mr Hodge.

MR HODGE: Thank you. You will see this is an email from Ms Turner, who's an employee of AMP, to ASIC, dated 9 September 2015?---Yes.

30

And the part of that email highlighted by Clayton Utz is:

The breach therefore relates to an administrative error in not turning off the fees on terminated arrangements.

35

?---Yes.

And, again, that statement was either false or misleading, because the breach also related to the 90 day exception, which was a deliberate decision. You agree?---Yes, I think as we've agreed previously, yes.

40

So on my count this was the 14th false or misleading statement by AMP to ASIC. You're losing count?---I'm in your hands in that regard, Mr Hodge.

45

I know. There's so many you will have to rely on my count, I'm afraid, Mr Regan. Can we bring that document down and bring up AMP.1000.0001.4844. This is a

letter of 26 November 2015 from AMP to ASIC. Have you seen this document before?---Could you just make it a little larger.

5 Yes?---I don't normally need glasses but I am just struggling just with that font size, if that's okay. A little more, yes. I think I have seen that, Mr Hodge. I'm just – it's part of my exhibits?

10 I don't think it is part of your exhibits, Mr Regan, but I will have that checked?---All right.

If we go to page 2 of that document which is ending .4845. And blow up the paragraph beginning "AMP can provide", you will see what the letter said was:

15 *AMP can provide an assurance that a process was in place to inform customers that services would no longer be provided.*

20 Now, this is, again, part of the fiction being maintained by AMP with ASIC at this time that they had terminated all of the ongoing fee arrangements when a client came into BOLR. You agree with that?---I agree about the service – I – I will agree that the services were not being maintained as represented in that letter, yes.

THE COMMISSIONER: You reject the word "fiction", Mr Regan?---I'm – it's Mr Hodge's word, Commissioner.

25 Do you reject it?---No, I don't reject it.

MR HODGE: Then I tender that document, Commissioner.

30 THE COMMISSIONER: Exhibit 2.27, letter AMP to ASIC, 26 November 2015, AMP.1000.0001.4844.

35 **EXHIBIT #2.27 LETTER AMP TO ASIC DATED 26/11/2015
(AMP.1000.0001.4844)**

40 MR HODGE: And, again, by my count then that brings us up to the 15th false or misleading statement by AMP to ASIC. I take it you've lost count now, Mr Regan?---I'm keeping count with you, Mr Hodge.

Thank you. Then can we bring up AMP.1000.0001.4781. This is a letter to ASIC of 14 December 2015 from AMP. Do you agree?---A little larger, if that's okay. Yes.

45 Have you seen this document before?---I can't be sure. And I'm not trying to be difficult it's just that I've seen quite a few documents as you might appreciate.

I understand?---Is it attached to the exhibits, do I know?

I don't believe so?---Okay. It's quite possible I have seen it but I can't bring it to mind at the moment.

All right. Can we go to page 2 of that document which is the page ending 4782.
5 Thank you. Can we blow up the paragraph that says "The administration error identified" and you will see what was said to ASIC was:

10 *The administration error identified is that in approximately 24 per cent of cases, the AMP product issuer received the spreadsheet but did not distribute to all of the appropriate administration teams to turn their respective ongoing fees off.*

?---Yes.

15 And the premise was being maintained here was that the way in which this problem of ongoing fees arose in the BOLR pool, insofar as it concerned products issued by AMP, was that there was a failure to properly action spreadsheets that were sent around within AMP. Is that your understanding?---Yes, as it's reflected in that section there, yes, definitely.

20

And that was a misleading statement because, of course, as we know, the failure was also related to the deliberate decision by AMP to continue to charge fees. Do you agree?---I do agree.

25 All right. And by my count that's the 16th false or misleading statement by AMP to ASIC. Can we then blow up the paragraph beginning "For ongoing service fees deducted." So now, this is relating to where it occurs in relation to non-AMP products. If we just break that down, what that means is a client who is on a particular register might be sold into the BOLR pool, and the fees that are being
30 received by an AMP licensee are coming from some external product issuer?---Yes.

So, for example, it might be that the client is invested in a particular managed fund and the managed fund is paying a fee effectively to – or debiting a fee in order for that to be paid ultimately to the adviser for services. That's right?---I think I
35 understand your point, yes.

And what this says is:

40 *For ongoing service fees deducted on accounts held by external (non-AMP) product issuers, the licensee advised the customer by letter, issued by the adviser selling the customer register, that the customer was to contact the external provider to turn off fees. In circumstances the customer did not follow this request, the licensee continued to receive service fees and did not have a process to adequately check work had been completed.*

45

Now, can I suggest to you this is misleading in two respects: first, in fact the letters hadn't been sent out to customers. You agree?---I understand there was a failure to send some letters, yes.

5 And, secondly, it has the suggestion – in fact, the explicit statement that this is effectively an error on the part of the client because they have failed to contact the external provider to turn off fees and AMP hasn't checked that, whereas, in fact, at least in some cases, it was the consequence of a deliberate decision by AMP. Do you agree with that?---I'm not sure of the detail of that. I – I do agree with you, though,
10 in relation to the – the nature of that letter and the expectation that the client should be the one that contacts the external fund manager.

Yes. And the suggestion – well, the suggestion is, first, that a letter went to the client telling them that they needed to contact the external provider?---We know that didn't
15 occur in all cases.

And that didn't occur. And second, that the reason then that the fees kept being paid was because the client hadn't contacted the external provider and AMP hadn't checked?---That's correct.

20 When, in fact, because of the 90 day exception, in at least some cases it was the product of the deliberate decision by AMP?---I – I wouldn't debate the point with you. It's just that without having a map to show the specific transactions, I couldn't give you absolute certainty but I think your point is well made.

25 All right. I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 2.28 letter AMP to ASIC 14 December 2015, AMP.1000.0001.4781.

30

**EXHIBIT #2.28 LETTER AMP TO ASIC DATED 14/12/2015
(AMP.1000.0001.4781)**

35

MR HODGE: And I think that takes us to 17 false or misleading statements, by my count, Mr Regan?---Well, are you counting that as one or two?

I only counted that as one. Do you think I should count that as two?---I think in
40 fairness, Mr Hodge, you should.

Okay. The 18th false or misleading statement by AMP to ASIC. Can we bring up AMP.6000.0010.0010. Now, this is a letter sent by ASIC to AMP on 10 October 2016?---Yes.

45

You've seen this before. It's exhibited to your statement?---Yes, it is.

And what ASIC wrote to AMP to say was that ASIC had obtained a client file where fees were still being charged after the client goes into BOLR and then the client is transferred to a different adviser?---Yes.

5 And so that then prompts a response, which is tab – I’m sorry, I said that was exhibited to your statement. I don’t think it is. I tender that document, Commissioner.

10 THE WITNESS: No, I think it’s there, isn’t it. Isn’t it one of the later documents?

MR HODGE: I’m told it is?---Yes. I think it’s there.

15 We don’t need to tender it. Thank you, Commissioner. Then if we bring up AMP.6000.0010.0013, which is tab 42 to Mr Regan’s statement. And this is the response by AMP to ASIC where, if we blow up paragraph numbered 1 – and you will see the last two sentences say:

20 *However, we are now aware that the ongoing service arrangement for (the client) was not terminated. This was in accordance with the business practice adopted during this period, that if the transfer to the incoming practice was scheduled within a short period of time, for example 90 days or less, then the ongoing service arrangement was not terminated.*

25 And this was, as I understand it, the first time that AMP confessed to the 90 day business rule to ASIC. Is that your understanding?---I – I think it is, because it was at that stage that it was starting to be investigated.

30 All right. Now, the way in which this is framed is that the 90 day business practice – or the period of up to 90 days would only apply if a transfer to another practice was scheduled. That’s the way it’s framed. Do you agree?---Yes, I think that’s my understanding of its purpose.

Is that how you understand the practice to have worked?---Yes, I believe I do.

35 All right. Can we bring up AMP.1000.0001.5093. So this is an internal chain of emails of employees of AMP. Have you seen this internal chain before?---Is it one of the ones attached to the statement, Mr Hodge?

40 I don’t believe so, Mr Regan?---I can’t be certain I’ve seen that one, Mr Hodge.

You can’t be certain you’ve seen it?---I can’t be certain I’ve seen it, no.

45 All right. Well, if we blow up points 3 and 4. So this is, first, explaining what happened post January 2014:

That from January 2014 with the criticality identified, the application of the business rule was strengthened. Michael D –

That must be Michael Diamente, is that right?---Very likely.

Continuing:

5 *What does this mean. This is the date we used in the coms to ASIC in August 2015.*

And then point 4:

10 *That post this date there are examples where discretion was used to leave fees on when back to back transactions were happening. The commercial practice was intended to be up to 90 days and subject to PM –*

What's PM?---I think that would be practice or partnership manager.

15

Hof?---The head of financial planning.

Continuing:

20 *Recruitment (other parts of the business) instructions to R and T-*

Is that registers and transfers?---Probably. I am not entirely certain.

25 All right. And what this seems to suggest is that what happened after 1 January 2014 was that the 90 day rule was changed in some respect so that it would only apply where there were back-to-back transactions that were intended to occur within the next 90 days?---I am not sure about the change.

30 All right. Well, you know that ASIC was told something had happened, something had changed as at 1 January 2014?---Where is that contained, Mr Hodge?

You remember we looked at those documents yesterday afternoon, Mr Regan, where ASIC was told the practice ended - - -?---It ceased on 1 January.

35 Yes?---2014. Is that what you're referring to.

Yes?---Yes, I agree, yes.

40 All right. And what this seems to suggest is we all agree it didn't cease but that it was – the practice was changed as of January 2014, so that the 90 day period would apply where there were back-to-back transactions scheduled?---I'm not – yes, look, I must say I'm not quite across the detail of that, but - - -

45 All right. Let's blow up points 5 and 6. And then these are – these points are explaining this separate issue, which is ringfencing as distinct from the 90 day rule?---Mmm.

And the first point – or point 5 explains:

5 *In this period, it appears likely that there were instances where rather than enter the BOLR ID, registers were retained in seller IDs to facilitate a sale of registers.*

?---Mmm.

And then in point 6 it says:

10 *When we formed the fee remediation team in early May 2015, logged the incident 27 May and in June, on the assumption that M and A –*

Which is merger and acquisitions, is that right?---Yes.

15 Continuing –

20 *facilitated all BOLR on sells I discussed with mergers and acquisitions and agreed no fees would be left on unless there was joint approval of the licensee, managing director and head of LVM. This subsequently became the business rule and a formal exception process applied.*

25 And so as I read it, and you're not sure whether you've seen this document before, what it seems to be saying is from May 2015, the process in relation to ringfencing was that fees would be left on only if there was joint approval of both the managing director of the licensee and also the head of LVM?---That is what it appears to say.

30 And the licensee MD in respect of at least AMPFP and Hillross was Mr Guggenheimer at the relevant time. And who was the head of LVM?---I believe that was Mr Morgan.

35 All right. And it appears, if we take that – the blow-up section down – thank you – this is an internal email being circulated within AMP employees in November of 2016, setting out or arriving at what their common understanding is of when they continued to charge fees for no service?---Yes, it is.

And I will tender that document, Commissioner.

40 THE COMMISSIONER: Exhibit 2.29, emails 11 November 2016 between Marsh, Collins, and others, AMP.1000.0001.5093.

45 **EXHIBIT #2.29 EMAILS BETWEEN MARSH, COLLINS AND OTHERS DATED 11/11/2016 (AMP.1000.0001.5093)**

MR HODGE: Can we bring up AMP.6000.0061.4329. So this is an email – the start of the email is an email from Ms Baker Cook, who is the head of litigation and dispute resolution at AMP at the time, emailing to solicitors at Clayton Utz. Do you see that?---Yes.

5

And that's in June of 2017. And she's forwarding another version of this November email that we've seen. If you look at the bottom of the page, you can see that there's an email from Mr Brivulis responding to that earlier email that we looked at?---Yes.

10 Perhaps if we bring up both pages. Mr Brivulis was in the – in the mergers and acquisitions team. Is that right?---I can't be certain of his exact role at that time, but he's in that part of the business - - -

15 Okay?--- - - - somewhere. He's in the administration part of the business is my point.

All right. So his comments on this consensus understanding are in red on the second page. You see he says in his email "Notes below"?---Yes.

20 And we can also see at the top of the second page an email back from Mr Diamente explaining – and he is part of licensee value management – explaining what his understanding was?---Yes.

25 And nobody, as far as I can tell from this email, is suggesting that they have some different understanding from that which has been set out by Mr Marsh. Have you read this email before?---I don't believe I have seen that.

All right. Well, let me - - -?---Is it in the exhibits?

30 No, it's not in the exhibits?---Right.

Let me suggest to you that what we can see from this email is that there was a common understanding amongst a number of different teams at AMP that there had been a separate practice of ringfencing going on throughout the period after May 35 2015?---Yes, I think that's correct.

All right. I tender that document, Commissioner.

40 THE COMMISSIONER: Exhibit 2.30, emails Baker Cook to Mavrakis and others 21 June 2017 AMP.6000.0061.4329.

**EXHIBIT #2.30 EMAILS BAKER COOK TO MAVRAKIS AND OTHERS
DATED 21/06/2017 (AMP.6000.0061.4329)**

45

MR HODGE: Now, can we bring up AMP.6000.0010.0015, which is tab 43 of Mr Regan's statement. This is the letter sent to ASIC by AMP on 23 November 2016. And can we blow up the paragraph under the heading 90 Day Or Less Exception. So this confesses about the 90 day exception and a little further on in this letter
5 confesses the 90 day exception continued to be applied after January 2014?---Yes.

If we take down the blow-up. It doesn't explain any change pre and post-January 2014 that was being referred to in those earlier emails between employees. You agree with that?---I can't recall - - -
10

Well, the – let me put it a different way. This email doesn't identify that there was any change in relation to the 90 day exception before and after January 2014. Do you agree with that?---I believe so.

15 And it doesn't identify the ring fencing process or rule that AMP had?---I don't believe it does.

And, therefore, doesn't explain that there was another respect in which fees continued to be charged by AMP where no services were being provided apart from the 90 day rule?---I haven't read the letter.
20

And – well, in any event, can I suggest to you that by not identifying the existence of the ringfencing practice, that was also misleading?---Yes.

25 So by my count then, this is the 19th false or misleading statement by AMP to ASIC. Now, can we bring up the Clayton Utz report, which is AMP.6000.0038.0001 [erratum: AMP.6000.0010.0440], or tab 3 to Mr Regan's statement. And go to paragraph 154 at .0058 [erratum: 0497]. Thank you. Clayton Utz interviewed a number of employees of AMP in the process of preparing their report?---Yes, they
30 did.

And they formed a view as to why it was that AMP sought to describe the problem as an administrative error to ASIC?---Yes, it's – you're not referring to something on that page; you're just referring to - - -
35

Well, as a general proposition they formed a view as to why it was AMP sought to describe the problem as an administrative error to ASIC?---I can't quite recall where that is in the report.

40 If you look at paragraph 154 that's on the page:

The desire to describe the cause as an “administrative error” was to justify to ASIC that the appropriate compensation for customers was a “refund of ongoing fees” rather than compensation based on “no advice”.

45 ?---Yes, if that's your point I agree.

And you accept that was the motivation of AMP in making this misleading statements to ASIC?---Yes, I do.

5 And then if we go to paragraph 224, subparagraph (g) at page 80, which is .0080 [erratum: .0519], can we blow up subparagraph (g) at the bottom of the page. And you will see what Clayton Utz also concluded was that:

10 *At times, we observed the stance of AMP in its interactions with ASIC was to seek to negotiate a commercial outcome with ASIC on the scope of the compensation payable to customers.*

They're perhaps unsurprisingly critical of that. Do you accept that that was the approach that was taken by AMP in relation to trying to negotiate compensation?---I accept Clayton Utz's finding.

15

Thank you. Can we now bring up tab 30 of Mr Regan's statement which is AMP.6000.0001.1894. And this is one of the two breach notices that AMP gave to ASIC on 3 May 2017?---Yes.

20 This one relates to the practice of ringfencing?---Yes.

And can we blow up the two paragraphs in the middle of the page which say:

25 *Following the review into the 90-day exception.*

Thank you. And I will read these out. It says:

30 *Following the review into the 90-day exception for BOLR transactions (which has been the subject of previous correspondence with ASIC) further work was undertaken in order to identify any other potential circumstances with respect to the breach which may require customer remediation. In undertaking this work, we identified that there may be instances where customers who were subject to a BOLR or other licensee buy back transaction were never transferred to the BOLR pool and/or subsequently transferred to a new servicing adviser/practice.*

35

That statement suggests that AMP only discovered or realised that ringfencing was occurring after it started investigating the 90-day exception. Do you agree?---I think that's correct, yes.

40

And we know from that chain of emails we looked at in mid-November 2016, that that was untrue. They had already identified ringfencing before the letter sent on 23 November - - -?---Yes.

45 - - - 2016. Do you agree?---Yes.

And in that respect, then, even this last breach notice was also false or misleading?---Yes, I think this was the one we discussed yesterday.

5 I don't think we did discuss whether it was false or misleading but we may have referred to it?---I thought I could recall suggesting that the language in that was incorrect.

10 I see. Well, in any event, by my count, this is the 20th false or misleading - - -?---Yes.

- - - statement made by AMP to ASIC?---Yes.

15 Thank you. Now, I want to ask you some questions now about some documents that – or some documents that weren't provided to Clayton Utz. Can we bring up paragraph 34 of the Clayton Utz report, the reference to the Clayton Utz report is 6000.0038.0001 [erratum: AMP.6000.0010.0440], which is tab 3 to Mr Regan's statement. And paragraph 34 is on page 20, page ending .0020. And you see Clayton Utz conclude – or observe that:

20 *The 90 day exception did not emerge out of a formal recommendation or study*

–

and go on to say –

25 *It was ad hoc in the manner in which the delegation of authority was exercised.*

And then if we go to paragraph 103, you see it said:

30 *It is difficult to know precisely who had knowledge of all these matters and the extent of any problem. However, we observe that the material we have reviewed, although not conclusive, may have been enough to put AMP on notice as early as 2013 that these “orphans” were being overcharged and that the BOLR process was not operating to ensure that customers were not being overcharged.*

35

Now, I understand you to say you agree with every conclusion reached by Clayton Utz in their report. That's your position. Is that right?---I agree substantively with the Clayton Utz report.

40 All right?---I think I would contest some of the conclusions that are drawn. I think – I certainly support the fact base that it provided.

45 What are the conclusions in the Clayton Utz report that you would contest?---There would be a number but I would need to go through the report, I think, with you. So one example would be that clear and consistent legal advice was always provided. In some instances, I think there was some equivocation about the legal advice. So, for example, it talks in one section about the business rule probably being – needing to

be reviewed. In my opinion, that's equivocation. I think the business rule should have been reviewed immediately, and it should have been escalated much more significantly than it was.

5 I see. You think – just let me make sure I've understood this – the example you're giving is Clayton Utz has said they think the legal advice was clear that the business rule of 90 days was a problem as a matter of law. Is that right?---And in – and in many instances it is clear and consistent.

10 All right. But you're saying there are a few examples where you think the legal advice was equivocal?---Mmm.

15 Is that right?---Yes. I mean, that example – and I haven't got it on the paper, but I think there's an example where it says, "This business rule should probably be reviewed." Well, in my opinion – and that was the – that was drawn from the legal advice – I think that it should have been much more dramatic in terms of its escalation.

20 I see. You think - - -

THE COMMISSIONER: What did you want, Mr Regan. You say it should have been more dramatic. What do you mean?---I believe that there should have been escalation through the legal process as much as the business process.

25 MR HODGE: Thank you. We will return, I think, to that point, Mr Regan, but can we look at a document, just to understand what happened in 2013. Can we go to AMP.6000.0011.7910. You will see, Mr Regan, this is the papers for The Practice Proposition Project Steering Committee Pack for the meeting of 24 May 2013?---Yes.

30 Now, you pointed out yesterday how these committees fit together. This committee, the Practice Proposition Project Steering Committee, reported to another committee. Is that right?---I understand that is so.

35 And what was the name of that other committee?---The FOFA – well, in fact, I think it's the title at the top of that one which is the Future of Financial Advice and Stronger Super Ready Program steering committee.

40 I see. And that upper committee was one that was chaired by Mr Meller. Is that right?---That's correct.

But this was a sub – perhaps not a subcommittee, this was a committee that reported to the committee that was chaired by Mr Meller?---That's correct.

45 Is that right? And you will recall we looked at a report that had been made to the committee chaired by Mr Meller which came out of this committee. Do you remember yesterday we looked at that?---Yes, we looked at that document.

And that document said, “We need to make a decision about what we’re going to do about orphan clients.”?---Yes.

5 And you pointed out that decision wasn’t being made by Mr Meller’s committee, it was a recommendation as to a decision which was going to be made by this subcommittee?---That’s as I understood it, yes.

All right. And this particular document, is this one you’ve seen before?---Yes, it is.

10 Okay. And this document wasn’t provided to Clayton Utz?---Now, I know that there was some documents discovered later as a result of the change in IT process. And what I mean by that is that I believe there was a – a full server download at some point after the original Clayton Utz report was provided, and I believe – if this is the same document – this is the one that came as a result of that search.

15 I see. I suspect this document predates the document that you’re thinking of, but let’s have a look at the document. If we go – if we see item 2 on the agenda is Action Items Update?---Yes.

20 And item 5 on the agenda is FDS Systems?---Yes.

And you understand FDT Systems is fee disclosure systems?---Yes, I do.

25 Sorry, fee disclosure statement systems?---Yes.

If we go to page 5 of the document which is .7914. So this is the action items and you will see the third action item is:

Investigate which BOLR/BOO –

30 What’s BOO stand for?---Buy-out option, I think.

I see:

35 *... customers are still being charged an ongoing fee.*

And that’s an action in process?---Yes.

40 Which is SC10-002?---Yes.

And the owner for that is AM?---Yes.

And AM is Andrew Mencinsky?---Yes.

45 Then if we go to page 35 of that document which is .7944. So you will see at the very top of the page this is a paper for item 5 which is FDS systems. Do you see that at the very top of the page?---Yes, it is, yes.

And it's a memorandum dated 20 May 2013 from Mr Mencinsky to that steering committee, that is, the committee that we're now - - -?---Yes.

- - - considering the pack for?---Yes.

5

And then if we go to page 40 of the document which is .7949. And you will see there's a heading Decision Required. Can we blow up the section under Decision Required, all the way down to the bottom of the page. From Decision Required down, thank you. So you will see what's being raised here is this same issue that had
10 been reported up to the higher committee that we looked at yesterday, which is a decision needs to be made as to what is going to happen to existing orphan policies?---Yes.

Or clients who have an OFA and fall within FOFA's FDS regime. Can I just ask one
15 thing: is the word "client" used interchangeably with "policy" within AMP?---They shouldn't be used interchangeably because a client may have a number of policies.

I see. And is the word - - -?---A client is a customer, sorry.

20 I see. And a policy, to take the example of an investment being made through a platform into many different funds, is that one policy or multiple policies?---I think if it goes through the platform it would be a single policy, but, Mr Hodge, I'm probably the wrong person to ask in – in terms of having the detail of that, but - - -

25 But you're group executive for advice?---Mmm.

But you're the wrong person to ask?---Only in respect to the technical detail around policies and how these things are processed.

30 Okay. So what's being flagged here is this decision needs to be made. Are you going to dial down, which we know what that term means, it means go down to base commission?---Yes, I think that's correct.

Or switch off all - - -?---Yes.

35

- - - ongoing fees or issue a fee disclosure statement to the orphan policy holder?---Yes.

40 And the point – or the issue under FOFA is that if you're going to keep charging fees to a client, then you need to issue a fee disclosure statement to them?---That's correct.

45 So that what's being accepted here as just a matter of reality is that as at May 2013 AMP has orphan clients who are paying fees sitting in the BOLR pool and paying fees. You agree with that?---Yes, that's correct.

But the legislative concern that has arisen is if they want to keep charging fees to them, they need to provide them with a fee disclosure statement?---That's correct.

5 And so notwithstanding that they're providing no services at all to these clients, that's not the reason why anybody is considering dialling down or switching off the fees. Do you agree?---But that seems to be so from that document.

And then two paragraphs down, you will see:

10 *AMP group can easily dial down/switch off ongoing fees received via –*

And there's various products there, and platforms:

15 *... because it has access to those systems.*

Can you see that - - -?---Yes.

20 - - - statement? And as I understand it, what that's saying is where we're – where AMP is dealing with internal platforms or products that it owns, then it could just switch off the fees quite easily if it wished to?---Yes.

But to date it has, by implication, chosen not to?---Yes.

25 But now it may contravene a further legislative provision – I'm sorry, now it may contravene a legislative provision in relation to fee disclosure statements if it doesn't switch off those fees and doesn't issue a fee disclosure statement?---That's correct.

30 And if we then go to page 41 of that document. And we blow up the section under Recommendations Paper. So you will see what the committee is being informed of is:

35 *A recommendations paper has been prepared which provides specific policy and process recommendations which will impact existing and future orphan policies/clients. The recommendations paper also provides information on proposed planner termination letter changes. This recommendations paper will be circulated to the appropriate stakeholders for review and action.*

40 That recommendations paper must be the paper prepared by Mr Magellan. Do you agree?---So which paper are you referring to?

Well, let's – can I tender that document, Commissioner.

45 THE COMMISSIONER: That will be exhibit 2.31, Practice Propositions Project Steering Committee pack. 24 May '13, AMP.6000.0011.7910.

**EXHIBIT #2.31 PRACTICE PROPOSITIONS PROJECT STEERING
COMMITTEE PACK DATED 24/05/2013 (AMP.6000.0011.7910)**

5 MR HODGE: Thank you. Then can we bring up – I’m sorry, Commissioner, Mr
Costello is not correcting the exhibit numbering which will be a relief to all of us.
Can we bring up ASIC.0019.001.0075. Now, you will see this is FOFA Practice
Proposition Stream Orphan Contracts, Policy and Process Changes and
Recommendations. A paper prepared by Mr Magellan?---Yes.

10 Perhaps even just to make the point clear, can we put that up on one side and can we
put up on the other side from the document AMP.6000.0011.7910, page 7950. So
you see this, can I suggest to you, must be the Recommendations Paper being
referred to in the steering pack. Do you agree?---Yes, I think I would agree.

15 And this version is up to version 1.2?---Mmm.

Can we go to page 7 of that document, which ends .0081. And you will see this is
setting out various issues that have to be resolved and the first issue is:

20 *Legal confirmation required on the maximum period of time and allowable
scenarios that an ongoing fee arrangement can be kept active once the
client/policy becomes orphaned, that is to say, unattached from a servicing
adviser.*

25 And it seems to contain an update which is:

30 *Ongoing fee arrangement can be kept active for up to three months before
being turned off*

?---Yes.

Now, you’ve seen a document with this type of update in it before, haven’t you, Mr
Regan?---Yes, I have. I believe it goes to version .4.

35 Yes. You’ve – that’s right. It keeps getting updated. And then if we go to page 13
of the document. We can take down 7910. Thank you. So what this is setting out is
proposed policy and process changes in order to deal with existing orphan
policies?---Yes, that’s correct.

40 And you’ve reviewed the later version - - -?---Yes.

- - - of this. Is that right? And let me summarise it, as I understand it. As I
understand it, the recommendation that was made to AMP by the relevant employee
was to classify orphan policies, which we can – is also orphan clients. Is that
45 right?---Yes.

As either likely or unlikely to be onsold or transferred to a new planner?---Yes.

There at the top of the page?---Can you just make that document a little larger for me, please.

5

Yes. Can we blow up the top of the page?---Yes, thank you.

So there's going to be two categories of orphans. One are orphans where AMP thinks it will be possible to sell the orphans on to another planner, and the second category will be orphans that AMP thinks it's not possible or unlikely to be sold on to another planner?---That's correct.

And you will see the recommendation is that for orphans falling into category 1, a fee disclosure statement be issued by whatever the applicable disclosure date is, rather than dial down the ongoing fee?---Yes.

And if we go down the page, you will see there's a rationale explained for why that is, that the – because it's likely that they're going to be sold on, it's going to be possible then for the planner to just continue with the existing ongoing fee arrangement if they wish, or they could negotiate a new one?---Yes.

Whereas if no fee disclosure statement was given, AMP would need to dial the fees down immediately, and when it onsold the planners, they would just have to negotiate a new ongoing fee arrangement?---Yes, that would have to occur within 30 days of the disclosure date.

And AMP – or the recommendation was to avoid the possibility of the purchasing planner having to negotiate a new ongoing fee arrangement, unless they wanted to?---Yes, I think that's correct.

30

And then the category 2 orphans are orphans where it is not likely that they will be onsold, and the recommendation for them is that an ongoing fee be dialled down immediately rather than issue a fee disclosure statement?---Yes, that's correct.

Now, that recommendation wasn't made because these clients were being charged for services they weren't receiving. That wasn't the reason for the recommendation, was it?---Just – could you just repeat that?

Yes. That recommendation, that ongoing fees be dialled down immediately rather than issue an FDS, was not made because these clients were being charged for services they weren't receiving. Do you know what the reason was?---No, I'm not entirely clear.

Let's go to the bottom of the page. You see the explanation is:

45

The rationale is that these clients are currently paying for a non-existent service and issuing an FDS may trigger the client to cancel both the ongoing

fee agreement and the policy, lodge a complaint with AMP and/or ASIC and possibly request compensation on the advice fees or dialled up commission for the previous 12 months. This would be a very negative customer experience.

5 That was the reason for that recommendation. Do you agree?---Yes.

And I tender that document, Commissioner.

10 THE COMMISSIONER: That will be exhibit 2.32, FOFA Practice Proposition Stream Orphan Contracts document version 1.2, ASIC.0019.001.0075.

THE COMMISSIONER: Is it a dated document, Mr Hodge? We've got the version number but has it got a date on it?

15 MR HODGE: It should – Commissioner, if we go back to page 2 of that document. So this version is updated as at - - -

THE COMMISSIONER: 21 May '13. Is that right?

20 MR HODGE: That's right.

THE COMMISSIONER: Version 1.2, 21 May '13. Thank you.

25 **EXHIBIT #2.32 FOFA PRACTICE PROPOSITION STREAM ORPHAN
CONTRACTS DOCUMENT VERSION 1.2 DATED 21/05/2013
(ASIC.0019.001.0075)**

30 MR HODGE: And Mr Regan, that recommendation was adopted by the relevant steering committee. Are you aware of that?---I think that's at 1.4. Is it the same version? So I think what you've got here is version 1.2.

That's right?---Is that the document we just looked at?

35

That's right?---And I thought it was version 1.4 that was looked at by the committee, or am I incorrect in that regard?

40 Well, the – in fact, and we will come to this, if we bring up AMP.6000.0011.8670, which is tab 34 of the exhibits to Mr Regan's statement. Now, this is the document that's exhibited to your statement but was not provided to Clayton Utz?---Thank you.

And - - -

45 THE COMMISSIONER: Well, do you agree it was not provided to Clayton Utz?---Yes.

MR HODGE: And I think you may have tried to offer an explanation for this before. Why was it not provided to Clayton Utz?---So as I understand it, there was a change to the server arrangements with Clayton Utz in that we provided a file transfer that was different to the previous one that had been delivered. So it was a
5 full FOFA file – a full FOFA file that had been provided to them post the production of the report, and that is why, I believe, this document was discovered later. It was discovered later by AMP as a result of a search in respect to another notice from ASIC.

10 I see. Again, we will come back to that. So can we go to page 2 of that document. You will see this is – these are the minutes from the previous steering – the previous meeting of the Practice Proposition Steering Committee and the minutes are of the meeting on 24 May 2013?---That’s that same date, is it?

15 Well, that – no, these are minutes of a meeting on 24 May 2013?---Can I ask you to blow it up for me again, if that’s all right.

If we blow up the top - - -?---Thank you.

20 Do you agree?---Yes.

And you will recall from the version numbers that we were just looking at of that paper by Mr Magellan, that version 1 point - - -?---Can I just check the minutes, are they dated? So the minutes you’re referring to.

25 Are the minutes dated? These are the minutes of the meeting on 24 May 2013?---Thank you, yes.

30 And they’re included as part of a – if we go back to page 1?---Sorry, I just missed the date that’s all. It was up the top; I was looking further down.

That’s fine. So it’s clear they’re included as part of the meeting pack for the next meeting on 5 June 2013?---Thank you.

35 And then if we go to page 3 of the document, which is part of the minutes. So you will see this is that item 5, fee disclosure statement systems - - -?---Yes.

40 - - - from the previous meeting. And can we blow up the section under the Heading Discussion/decisions. And you will see the third point “AM” which is Mr Mencinsky:

... advised ongoing advice fee in some orphan accounts have not been turned off. SC –

45 Which is steering committee?---I believe so.

Continuing –

...agreed the solution will be to dial back down fees after three or six months so long as the client is not serviced by Horizon.

So that was the decision which was made?---Yes.

5

And can I suggest – and we can go back to the detail of this if necessary – that was the solution that had been set out in the paper by Mr Magellan?---I just can't quite recall back to Mr Magellan's paper.

10 All right. Well, we will go back to that shortly. Can we – and then you will see the next point is:

SH asked to investigate how/who has not actioned to policy in regards to the previous point.

15

And SH is Mr Helmich?---Helmich.

Helmich, I am sorry. And what was Mr Helmich's position?---At that time he would have been head of the financial planning business. I can't recall the exact title.

20

All right. Then if we go to page 5 of that document, which is .8674. And you will see this is a memorandum from Mr Himmelhoch to the other members of the Practice Proposition Steering Committee?---Yes.

25 And if we go to page 6, .8675. And blow up section 7, which deals with orphans. And you will see what he's recording, he seems to have not quite understood what is recorded in the minutes, which is:

As agreed at the last steering committee we are turning off any OFAs –

30

That's ongoing fee arrangements –

... in the orphan registers that are older than six months. We are also working to build a process whereby AMP can issue an FDS for registers purchased. Assuming we adopt a six month rule going forward for the turning off of advice fees then we will have to produce FDSs for roughly half the number of clients that we purchase.

35

Can I just pause on that. Do you understand or can you explain to the Commissioner why it would only be necessary to produce FDSs for half the number of clients that AMP purchases if they adopt a six month rule?---Presumably because – I'm not entirely clear on that.

40

All right?---I should be able to give you a better answer but I just can't quite bring it to mind at the moment.

45

And then can we go to page 13 of that document. And you will see at the top of the page it's explaining an issue in relation to grandfathered commissions, which is:

5 *When a practice changes licensees or an adviser with a book of business changes licensees after 1 July 2013, there is a break in the relationship that pays the commission and grandfathering is lost.*

Do you see that statement?---Just which – where is it on the page, Mr Hodge?

10 At the very top of the page?---Thank you.

And you understand – sorry, I should go back a step. You've obviously read this document because you've exhibited it to your statement?---Yes.

15 And in your statement – and we will come to this – you've made some observations about what you draw from this document, yes?---Thank you.

And – well, no, I am asking you, you agree you make some observations about what you think about this document?---Yes, I believe so. It's in the witness statement.
20

Yes. And they're your observations, aren't they?---Yes, I just can't quite bring them to mind at the moment.

25 THE COMMISSIONER: I wonder, Mr Hodge, whether we might be better off to give the witness five or 10 minutes. He has been going, what, the thick end of two hours. We might, I think, take a break for five or 10 minutes. Is it convenient to do so now?

30 MR HODGE: Yes, Commissioner, could it be 10 minutes?

THE COMMISSIONER: If we come back at shortly after quarter to midday.

MR HODGE: Thank you, Commissioner.

35 THE COMMISSIONER: Yes.

ADJOURNED **[11.36 am]**

40 **RESUMED** **[11.47 am]**

45 THE COMMISSIONER: Thanks, Mr Regan. Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner. We were looking at document which is tab 34 to Mr Regan's statements. If we can bring that back up. Mr Regan, what I

was asking you about was the particular issue raised on this page for consideration by the committee. And I had pointed out to you that at the top of the page it says:

5 *When a practice changes licensees or an adviser with a book of business changes licensees after 1 July 2013, there is a break in the relationship that pays the commission and grandfathering is lost.*

?---Yes.

10 And your understanding is that there's commission that continues to be paid to a licensee under grandfathering arrangements under FOFA, so long as there hasn't been a change in licensee before – I'm sorry, there hasn't been a change after 1 July 2013?---Mr Hodge, I'm not totally familiar with this because it was – it was
15 legislation that – and a change that occurred during my time but from the documents that I've read, that's my understanding.

All right?---Yes.

20 You understand that there's still commission, very substantial amounts of commission, being received by AMP licensees?---Yes.

And that commission is a consequence of the grandfathering arrangements?---Yes, that's correct.

25 And under the grandfathering arrangements, so long as there hasn't been a break in the relevant client licensee relationship after 1 July 2013, the commission can continue to be retained by the licensee?---I understand that to be the case, Mr Hodge.

30 Okay. And what this paper is identifying as a problem for AMP is that if there is a break in their relationship, then after 1 July 2013, then they will lose the commission?---And – and which section is that?

Well, you've read the paper, haven't you?---Yes, but I just can't bring the detail to mind at the moment.

35 All right. Well, if we go down to the bottom of the page, the second half of the page. Do you recall in reading the paper the issue of the concept of Register Co?---Yes, I do.

40 And is the concept of Register Co that Register Co will end up being an authorised representative of all of the AMP licensees?---I – I can't recall that well enough to answer that, Mr Hodge, without picking up the specific reference, if it's there. I have read the document but I haven't retained all of it.

45 All right. Well, you see the second sentence under the heading issue BOLR and Register Co is:

The concept of Register Co is that client registers are held in a central pool so that they can be transitioned between AMP businesses/licensees and maintain grandfathering.

5 ?---Yes.

And take your time to read it, if you wish, but the problem that is being identified is that if you move a book of clients from one licensee to another which could happen under the BOLR arrangements, then you lose grandfathering?---With licences under
10 the BOLR arrangement but that's within the licence of AMP Financial Planning.

I see. You don't think there would be any reason to be concerned about this, that is, if you've got – if you've got a book of clients and they're sold back to the BOLR pool, and then sold to somebody else, you don't think there would be any break in
15 the relationship?---If it's within the same licensee, and the only point I'm simply making is that – that BOLR is unique to AMP Financial Planning, and so any movements between BOLR and then through to advisers I wouldn't have thought was affected by this grandfathering issue.

20 I see?---That's the only point I'm making.

Okay. And then you see the second issue identified there is:

25 *Orphans that have had commissions withheld will not be able to reactivate commissions after 1 July 2013.*

?---Yes, I do see that.

And the proposed action is:

30 *Turn on commissions.*

?---Yes, it is.

35 And can I suggest to you that the ideas that are communicated on this page are that AMP is attempting to structure its business in order to maximise the possibility that commissions will be able to continue to be collected after 1 July 2013?---I think that's a fair conclusion.

40 All right. And then if we bring up your statement, paragraph 227?---Yes.

And if we blow that up. Thank you. So you're referring there to – I understand that that document and you say:

45 *These documents demonstrate that there was a program of work overseen by several committees to ensure the compliance of AMPs advice licensees with the*

FOFA reforms which were to be implemented in the period 1 July 2013 to 1 July 2014.

5 I just want to understand your particular view of these documents and then we will
extend out to the AMP organisation. As you've agreed with me, what the particular
page we were looking at demonstrated was AMP trying to figure out how it could
maximise the chances of commissions being grandfathered so it could keep receiving
it. In your view, is that equivalent to ensuring compliance of AMPs advice licensees
with the FOFA reforms?---Sorry, I just missed the - - -

10 Is your view that attempting to maximise the chances that commissions could be
grandfathered and, therefore, kept by AMP is the same as ensuring compliance of
AMPs advice licensees with the FOFA reforms?---I – I obviously wasn't involved in
the discussions at the time, so I have no context around it. I expect that there's a
15 technical issue there, but certainly not one that is customer centric.

I'm sorry, you will need, I think, to put that into some language that I can better
understand. When you say a technical issue but not one that's customer centric, what
does that mean?---Well, I think, if I understand it correctly, and I'm only going on
20 what's in the documents, but it would seem to me that technically, there was an
entitlement that AMP could claim in relation to those commissions and chose this
practice to do it. To the extent that that is or isn't compliant with FOFA is something
I'm unclear of because I think it's a legal question in that regard. That's the only
point I'm making.

25 I understand?---Because I think you're asking me is – is that going to be FOFA
compliant. I'm not sure. And – and I – it would be wrong of me to suggest that I do
know because I don't. But the point I would agree with is it's certainly not
something that is customer centric. In other words, it's not something that is in the
30 interests of the customer.

No, it's in the interests of AMP?---Yes, it is, without question.

35 So perhaps if I put my question to you in a different way. Do you think that acting in
the interests of AMP rather than the interests of customers is the same as ensuring
compliance of AMPs advice licensees with the FOFA reforms?---I am not sure I
know the answer to that question, Mr Hodge.

40 All right. Can we bring up ASIC.0019.0001.0003. Now, have you seen this
document before, Mr Regan?---I can't bring it to mind. I don't believe it's in the
witness statement.

It's certainly not in your witness statement?---Thank you.

45 Were you aware that there was a centralised log of decisions made by the Practice
Proposition Steering Committee?---I don't believe I was.

Okay. You see at the bottom of the page an email from Mr Mencinsky to Ms Parra?---Yes, I do.

5 And you will recall from the documents we've already looked at, Mr Mencinsky was the owner in relation to issue 5 or item 5?---He was.

FDS systems. And he's pointing out that there is an error in the log of the decisions made on 24 May 2013?---Yes.

10 Do you see he says:

The SteerCo decisions log is incorrect for the following entry.

15 And there's a single entry on 24 May 2013. He then, over the following page, explains what – how the log should have read. And can we – I tender that document, Commissioner.

20 THE COMMISSIONER: Exhibit 2.33, emails Rakich to Parra and others, 14 June 2013, ASIC.0019.0001.0003.

EXHIBIT #2.33 EMAILS RAKICH TO PARRA AND OTHERS DATED 14/06/2013 (ASIC.0019.0001.0003)

25 MR HODGE: Now, I'm not sure if this attachment is linked as a separate document or not but can we bring up ASIC.0019.0001.0005. All right. So this is a – the spreadsheet log, Mr Regan. And if we go down to the bottom – this is the updated spreadsheet log. If we go down to the bottom, and can we zoom in on SC11-D04.
30 I'm not sure if that's readable for you?---Yes, it's fine, Mr Hodge.

You will see what it's recording is:

35 *A decision made on 24 May 2013 in relation to fee disclosure statements, existing orphan policies decisions –*

and it records the decision that needed to be made in column D. And then if we go over, scroll across, keep going. Thank you. And then at the end it records what the decision was. And you will see the decision being recorded is:

40 *Agreed the solution will be to dial back down fees after three or six months so long as the client is not serviced by Horizon. Investigate how/who has not actioned the policy in regards to the previous points.*

45 ?---Yes.

So tying these documents together then, this is the log reflecting the minutes that we've already looked at in relation to this meeting on 24 May 2013? Do you want to see the minutes. Let's bring that up. Can we bring up the document which is AMP.6000.0011.8670. And go to page .8672. And you will see under the
5 discussions/decisions, AM – that's Mr Mencinsky:

*Advised ongoing advice fee on some orphan accounts had not been turned off.
SC –*

10 That's steering committee –

agreed the solution will be to dial back down fees after three or six months so long as the client is not serviced Horizon.

15 ?---So that's item from 24 May, I think.

That's the minutes of 24 May?---Yes.

20 That's the minutes, there's a centralised log. The log wasn't corrected until June but the log when it was corrected reflected that decision?---Thank you.

Commissioner, I didn't tender that earlier ASIC document which is the spreadsheet. I should do that.

25 THE COMMISSIONER: Exhibit 2.34, decision log spreadsheet concerning meeting 24 May 2013, ASIC.0019.0001.0005.

30 **EXHIBIT #2.34 DECISION LOG SPREADSHEET RE MEETING 24 MAY 2013 (ASIC.0019.0001.0005)**

35 MR HODGE: Now, you raised – I think you raised a query before the break, Mr Regan, about the proposition that that decision reflected the recommendations that had been set out by Mr Magellan. So can we bring that document back up. That's exhibit 2.32, ASIC.0019.0001.0075. And again, if we just go to page 2 first. You will see for the purposes of document change control, version 1.2 is dated 21 May 2013?---Yes, it is.

40 And then if we go back to a page we've already looked at which is page 13, the page ending .0087. This is that category 1 and 2. I think, to be fair to you, the part we were looking at in this is only concerned with existing orphan policies, that is, policies that are – or clients that are already in the BOLR pool and are orphans?---Mmm.

45 You understand that?---Yes.

And you will see in the middle of the page in slightly smaller text - - -?---I might have to get you to blow that one up, too, if that's okay. Thank you.

So this is that category 1 which is - - -?---Yes.

5
For category 1 they're likely to be sold. And then issue them an OFA. Then go down the page, category 2, that's the ones who are unlikely to be sold and, therefore, it's recommended to dial down their fees immediately and, therefore, avoid having an FDS because otherwise they might cancel or lodge a complaint, possibly request
10 compensation, and that would be a very negative customer experience. And then if we go over the page to page 14.0085. You will see this is in relation to new orphan policies. I didn't take you to this but in fairness, I think I should. So this is dealing with what happens when orphans come into existence after 1 July 2013. So they're not existing orphans?---Thank you.

15
And you will see, again, what's said is they should be categorised according to whether they are likely or unlikely to be sold?---Yes.

20
And if they are likely to be sold, then – sorry, sold within three months, then the recommendation is not to dial down their fees. And you see the asterisk there:

Three months grace period is a pre-existing business rule and is not a legal requirement.

25
?---Yes.

And category 1, which is the likely to be sold within three months:

30
It is recommended that the ongoing fee be kept active for a maximum of three consecutive months for these policies. And if it's not on sold or transferred within the first three months, the ongoing fee should be dialled down and the ongoing fee arrangement terminated.

35
And there's an explanation of what the rationale is:

The rationale seems to be the ongoing fee can only be kept active for up to three months otherwise a breach of contract has occurred.

40
But as you have already agreed with me, there's no reason why the fee should be kept active for any time, is there? You agree, there's no reason?---So I think the only question that can occur is in the strict definition of the Corporations Act, which refers to the, in some instances, the intention to supply the service.

45
I understand. We will come back to that. And then you see category 2 which is – so this is new orphan policies that are unlikely, and the recommendation with respect to them is that their fees be immediately dialled down for the same very negative

customer experience reasons. And then if we go to the very last page of the document, which is Risks and Issues, what's explained is:

5 *Under the new FOFA fee disclosure statement environment there are several risks and issues related to not immediately dialling down the ongoing fee on an orphan non-serviced policy and maintaining the ongoing fee for up to three months on an orphan policy without providing advice or service in return. They include reputational damage to AMP, legal and compliance issues, possible anti-avoidance issues if AMP doesn't dial down ongoing fees.*

10

And then some various things about the administrative inconvenience of this. So that's the paper – and I will go back to my question: do you agree that the decision that was ultimately made reflected the recommendation that had been made by Mr Magellan?---Yes, I believe it does.

15

All right. Now, can we then bring up the Clayton Utz report, which is AMP.6000.0038.0001 [erratum: AMP.6000.0010.0440]. And go to page 15 of that document, paragraph 21. And blow that up and you will see what's said is:

20

It also appears –

That is the 90 day rule –

25

to have evolved out of discussions at a risk meeting or regular management meeting rather than being evidence-based or the result of any recommendation or consultation prior to its implementation as a business rule or practice. There is no evidence that it was formally documented or formed part of the BOLR policy.

30

That statement – and I don't say this in any way critically of Clayton Utz – but that statement is incorrect. Do you agree, based on the documents we have looked at?---Yes.

35

And the likely reason it is incorrect is simply that Clayton Utz wasn't provided with these documents?---No, that's quite possible.

40

And can we then go to AMP.0001.0025.0913. So this is an internal email or chain of internal emails at AMP, and you will see the original email is sent by Mr Magellan attaching a PowerPoint presentation?---Yes, I see the email.

45

Have you looked at this email and PowerPoint presentation before?---I'd have to see the PowerPoint presentation.

All right. Well, let's - - -?---Is that in the – is that one of the exhibits?

45

No?---No.

Can we bring up AMP.0001.0025.0917. This is the PowerPoint presentation that was attached. Do you remember having seen this?---I've seen something that's like this but I couldn't be certain of this document.

5 All right. Could we go to page 0920. The fourth page in?---I can't recall seeing this document.

So can we blow up the sentence fourth from the top beginning:

10 *Ongoing fee can be charged.*

You will see what's set out in the presentation is:

15 *Ongoing fee can be charged up to 31 January 2014 – but if contracts are not being serviced in interim, then this course of action risks ASIC breach and/or customer complaints.*

?---Yes.

20 I think you agreed with this several times yesterday but there was no possibility of those contracts being serviced if they were in the BOLR pool as at 2013, was there?---I thought what was discussed was that there were various attempts to service at points in time through AMP Direct but I can't – couldn't be certain of those – or I can't be certain of those attempts and what service was provided.

25 All right. Well - - -?---And at what points in time.

Let's just pause on that. Very recently in the last year, under your watch, there has been attempt – an attempt to come up with a capacity to actually provide proper
30 planning services to clients in the BOLR pool?---That's correct.

Do you agree with that?---That's correct.

35 And that requires having planners available to conduct things like annual reviews - - -?---That's correct.

- - - and things like that, be actually able to provide personal financial advice?---Absolutely.

40 And until that initiative by you in the last year, there was no capacity within AMP to provide annual reviews or personal financial advice to people within the BOLR pool?---Mr Hodge, all I'm saying is that I wasn't in the business at that time. So I just can't be certain of what particular arrangements were there.

45 All right. Can I suggest to you what this indicates is that it was just accepted as a fact of life within AMP as at September 2013 that they would take – they would

chance their arm with an ASIC breach or customer complaints?---I mean, I don't think – I accept your language but I'm not in a position to confirm that.

5 And then if we go to the document which ends .0934. I'm sorry, the page that ends .0934, I apologise. Thank you. So this is explaining what the, at that time, current policies and processes are. And the ongoing fee is retained – or is said to be retained:

10 *...for three or six months on contracts that are ring-fenced for a prearranged on sale to another planner or dialled down immediately for contracts that are not ring fenced.*

Do you see that?---Sorry, which point was that, Mr Hodge?

15 Point number 1 at the top of the page under Current Policy and Process. And then – so that's what's described to be the current process. If you then look at what is now to be recommended - - -?---The date of that was, Mr Hodge, when you say the current process? What was the date on that?

20 The date of that was 29 August 2013?---Thank you.

And then you will see what's recommended to be the process is that the ongoing fee will be retained for three or six months for all contracts while AMP attempts to on-sell after which the ongoing fee is dialled down?---Yes.

25 And that seems to suggest that what was being proposed was that AMP would go even further than what had originally been recommended by Mr Magellan, which you will recall was dial down if unlikely to sell but leave on if likely to sell, to now just leaving on for everyone?---On the face of it, yes. I don't know what other context is involved in that, but I understand your point.

30 And have you made any investigation as to whether that's what happened?---No.

35 Okay. And then if we look at page .0935. This might explain why it is that there's this reference to three months and six months. You see row 3, if we blow that up see activity 3:

40 *Confirm how long the ongoing fee can remain active on orphan clients sold by AMPFP, Hillross, Charter and other licensees before dialling down.*

And the explanation is the pre-existing rule for AMPFP is three months but for Hillross is actually six months?---Yes.

45 And hence the reason, it would seem there is these constant references to three months and six months. You will see the owners of that are the licensee representatives and Mr Van Leeuwen?---Yes.

Do you know who Mr Van Leeuwen was at the time?---Yes, I do.

What was his position?---I think he was involved in register management was his role at that time.

5

Was he the head of client registers?---He may well have been. I am not familiar.

All right. And he – how does he fit within the advice business?---Back then – look, I’m not – I wasn’t actually involved with the business at that time.

10

Is there still a head of client registers?---Yes, there is.

And does the head of client registers report to you?---No.

15

Who does the head of client registers report to?---Head of client registers reports to Mr Dayton who reports to Mr Ryman.

Is Mr Ryman in a different group executive?---Yes, he is.

20

I see. So this is now crossing out of advice - - -?---That’s correct.

- - - and into another section of the business?---That’s correct.

25

All right. And at the top of the page you will see what’s set out in the PowerPoint presentation in row 1 is:

Confirm which contracts should have ongoing fee dialled down and which will be serviced –

30

And the first point is recording that decision we’ve already looked at:

A decision was made that contracts which shouldn’t/won’t be onsold will have their ongoing fee dialled down.

35

And again the owner for that are the licensee reps and Mr Van Leeuwen. On that can you just explain who would be the licensee reps?---I don’t know.

Okay. I tender that document, Commissioner.

40

THE COMMISSIONER: Is it just the PowerPoint, Mr Hodge?

MR HODGE: Actually, I tender both documents, Commissioner, thank you.

45

THE COMMISSIONER: Exhibit 2.35 will be emails between Byrne and Marsh and others, 30 August 2013, AMP.0001.0025.0913.

**EXHIBIT #2.35 EMAILS BETWEEN BYRNE AND MARSH AND OTHERS
DATED 30/08/2013 (AMP.0001.0025.0913)**

5 THE COMMISSIONER: 2.36 will be PowerPoint presentation Client Transfer Policies and Processes. Is it 29 August 2013, I think you said, Mr Hodge?

MR HODGE: 29 August 2013 is the date of the email that sends it, Commissioner.

10 THE COMMISSIONER: I see. Well, I won't include the date in that AMP.0001.0025.0917. Exhibit 2.36.

**EXHIBIT #2.36 POWERPOINT PRESENTATION CLIENT TRANSFER
15 POLICIES AND PROCESSES (AMP.0001.0025.0917)**

MR HODGE: Thank you, Commissioner. Commissioner, can I just indicate there's one other document or set of documents that I need to take the witness to in relation
20 to this line of questioning. However, it's unclear whether their confidentiality claims have been resolved over them. What I propose to do – and I should add some detail to that. They were documents that were only produced to us by AMP either very late on Sunday night or very early on Monday morning. What I propose to do is, as I
25 won't conclude Mr Regan by lunch, we will attempt to resolve that issue over lunch so we can then deal with it immediately after lunch.

THE COMMISSIONER: Right. How much longer do you expect to be with Mr Regan and how are we travelling for time?

30 MR HODGE: We're travelling all right. I expect that I will - - -

THE COMMISSIONER: That's deeply informative, Mr Hodge.

MR HODGE: I expect that I will still be going for some period of time after lunch
35 with Mr Regan, and then we will move on to Mr Keating this afternoon.

THE COMMISSIONER: Yes.

MR HODGE: And I hope to move on to the next witness after that this afternoon
40 but that may depend on some things.

THE COMMISSIONER: Yes.

MR HODGE: Thank you, Commissioner.

45 THE COMMISSIONER: I will stop interrupting you.

MR HODGE: Now, Mr Regan, I want to move to a different topic, which is AMPs approach to fees and commissions. And I will have your statement brought up. Can we go to paragraph 88 of that statement. You were – you were asked a question which was for each calendar year from 1 January 2008 to date, to identify the total amount of ongoing fees charged to customers of each of the licensees or their authorised representatives. And you explain in answer to that question some of the difficulties that AMP had with that. But one of the explanations in paragraph 88 is that it is not readily possible to differentiate between OSFs which are ongoing service fees and commissions. Can you explain to the Commissioner why that is?---I – I can't give you a particularly good technical explanation. I'm not familiar with the way those operations work at all. The best I can give you is that when we started looking for this information, that was the explanation we were given.

Is the explanation that within the systems of AMP there's simply no distinction drawn between whether something is a fee for service or a commission?---Mr Hodge, I would be speculating. I just simply don't know enough of the detail to answer that.

And you see in the first sentence of paragraph 88 you say:

Unless an adviser's files are subject to an audit by the advice licensee, in respect of those fees the advice licensee does not ordinarily know the amount charged by an adviser directly to the customer.

Can you explain what you mean by that?---What I mean by that is that I think it requires a physical examination of the relevant file to understand. Again, I'm not close to the detail of this at all, Mr Hodge.

Does this apply only to fees that are being invoiced by the adviser to the client or does it also apply to fees that are being directly debited from a product or platform?---I can give you a probable answer if that's satisfactory.

Just do the best you can, Mr Regan?---So the best I can do is I think that's the case. I think it applies to both but I'm not entirely certain. Again, I'm not particularly close to the detail of this.

All right. And then can we blow up paragraph 89. You will see it said:

From records held in respect of AMP products, by identifying the relevant products and ongoing service fees, it is possible to estimate the total amount of the ongoing service fees charged to customers by advisers.

?---Yes.

Can you explain how that estimation was done?---No, I can't.

All right. So when we come over to paragraph 92 of your statement, which is on page 22 and the table there – thank you – what's set out is an estimate of ongoing

fees from the period 1 January 2008 to 31 December 2015. You're not sure how that estimate was made by AMP?---No, I – I'm not, Mr Hodge. I have relied heavily on the work of others to produce that table.

5 And yesterday you gave some evidence, the effect of which was that in – for the –
for the year 2016, you thought that about 30 per cent of the revenue coming from
clients that went into BOLR would be fees for service, as distinct from commission.
Do you recall that evidence?---Yes, I think I was trying to estimate that figure, and I
think I probably drew it from the – from the table, because I – the – the number I was
10 giving you, if I looked at 2015, my recollection of the total amount of revenue paid
on an ongoing basis, fees and commissions to advisers, is about 600 million. And –
and just a quick back of the envelope tells me that's the approximation.

15 Sorry, total revenue paid to advisers in what year?---Approximately today - - -

All right?--- - - - as in the current state, we would be paying about \$600 million of
total ongoing revenue to advisers.

20 And that would be comprised of both - - -?---Fees and commissions, yes.

I see. And the most up to date information in your statement seems to be for
2015?---Yes.

25 Which is saying that \$112.7 million for fees was charged to customers?---That's for
AMP Financial Planning.

I see?---That 600 million I gave you - - -

30 Is the total?--- - - - is the total, yes.

For Charter, Hillross and ipac?---Yes. That's correct. That number is approximate.

I understand?---As in my estimate is approximate.

35 Of 600 million is approximate or the percentages?---The percentage, yes.

Okay?---You asked me to give you a number so I've done the best I could with that.

40 I appreciate that. And that would mean then, even today, it remains the case that the
majority of revenue that is being paid to financial planners within the AMP network
is derived from grandfathered commissions. Is that right?---I think that would be
correct. I - - -

45 Or is the other part of the commission, to be fair, there's a few things that are
excluded. So life insurance policies. Would that be caught up here?---No, the figure
I've given you, I think, is the total for all products - - -

Yes. Is - - -?--- - - - as in the commissions.

Is any commission payable on life insurance included as part of that figure for \$600 million?---Yes, it is. Yes, it is.

5

Okay. So some of that commission is not grandfathered commission?---That's correct. Life insurance is not – is – is treated differently under the conflicted remuneration rules.

10 But much of it then, presumably, is grandfathered commission?---Yes, I think that's correct, yes.

All right. And you've explained in your statement that there is a policy document that was provided to planners about what fee disclosure statements they needed to
15 Provide?---Quality advice fundamental?

That might be the name of the document. We will bring it up. It's tab 7 to Mr Regan's statement?---So just to explain that, quality advice fundamental or QAF is the general name we give to advisers notifications.

20

Yes. So if you have a look on the screen this is fee disclosure statement. That's the document you are thinking of?---That's the one, yes.

25 So this explains what disclosure a client – I'm sorry, what disclosure a planner or authorised representative should be making to a client?---Yes, that's correct.

And if we go to page 15 of that document?---This is the July 2013 version, isn't it?

30 Yes. Has it been updated?---I believe it has.

Okay?---I believe there's a – I will get it wrong but I thought there was – I thought there was later versions.

35 I'm sorry, do you - - -?---And I thought there was – in the witness statement an exhibit for a later version, a 2015 version.

I understand. If we go to tab 8, then, which is AMP.6000.0020.5191. This is the later version you are thinking of?---Yes.

40 And if we go to page 8 of that document, .5198. What this is explaining to advisers is that they – and you will see this under the heading Ongoing Advice Fees:

45 *An adviser is only required to give a client a fee disclosure statement or an opt-in renewal notice where the adviser is charging the client an ongoing advice fee for more than 12 months.*

?---Yes.

And then you will see there's two sections at the bottom of the page. One is describing what is an ongoing advice fee and the other is describing what is not an ongoing advice fee?---Yes.

5 And then if you go over the page to page 9, you will see at the bottom of the page there's an explanation to the planners of the grandfathering arrangements?---Yes.

And I want to understand AMPs attitude to grandfathering commissions. It is possible, isn't it, for an AMP authorised representative or financial planner to rebate to the client the entire amount of a commission received?---Yes, they can.

10

And one possible arrangement that some financial planners would or have entered into with clients is that they rebate the entire amount of the commission, and then charge a separate ongoing advice fee for whatever the ongoing advice is that they're providing?---Yes.

15

You're familiar with that type of arrangement?---Yes, I've read of it, yes, yes.

Is that not an arrangement that's encouraged within AMP?---I couldn't comment, to be honest, Mr Hodge.

20

Well, you are the group executive for the advice business?---Mmm.

You are ultimately responsible, I assume, for the 2800 planners that sit within the AMP network of planners?---Mmm.

25

Is it really your position that you cannot comment on AMPs attitude as to the idea of dialling down commissions?---So all I was getting at was that you – I'm not sure of what direction has been given to our advisers. I'm simply not close enough to the detail in that regard.

30

If we continue through with the nature of this arrangement that I'm talking about, if you dial down the entire commission, or possibly by changing it with the product issuer or alternatively by rebating the entire commission - - -?---Yes.

35

- - - to the client, and then you charge the client an ongoing service fee, that means that all of the legislative arrangements under FOFA apply to that ongoing service fee. You agree?---Yes.

40 If the only fee that a planner is charging to a client is an ongoing fee, then they need to provide a fee disclosure statement to the client?---That's correct.

For the entire amount they are charging to the client?---That's correct.

45 Similarly they need to provide opt-in notices to the client?---That's correct.

And the client needs to opt in?---That's correct.

Does AMP, in respect of its advice business of which you are the head, have an attitude as to whether it will be appropriate for financial planners to not charge or take commissions and to, instead, only charge fees for advice, service fees for advice?---So we leave that at the contract level of the negotiated level with the client and the adviser, is my understanding of it.

5
10 So AMP has no view as to whether its planners should or should not cease retaining commissions and only charge for services provided?---I haven't seen the – any specific communications in that regard. If you're - - -

No, no, Mr Regan, you're the group executive in charge of advice?---Mmm.

15 Ultimately, the decision must be yours made in consultation with the GLT, I assume. You're responsible for it. You might discuss it with the GLT. Do you agree?---I – I haven't had discussions in that regard with the GLT.

20 Have you turned your mind at all to the question of whether it is appropriate for planners to continue to take commissions in respect of their clients?---My preference would be for fee arrangements but the arrangements that exist between the clients and their advisers are the arrangements that exist between the clients and the advisers.

25 Is there anything that would stop AMP from adopting that as a position, an official position that its – that its planners should not be taking commissions from products and should only be receiving fees for service?---Could you just - - -

30 Is there anything that would stop or impede AMP from taking as its official position that its planners should only be receiving fees for service and not taking commissions?---So it's able to be done, if that's the question?

Yes?---Yes, we could adopt that position, yes.

35 And why don't you?---I will be honest and say, Mr Hodge, I haven't turned my mind to it. The arrangements that we have in place are to allow the planners to negotiate their own arrangements with their clients, and we're working through the overall grandfathering period as things currently stand.

40 I'm sorry, when you say "working through the overall grandfathering period" what does that mean?---So progressively the commission is dropping away and the fees are taking over. So as clients, for example, negotiated into new arrangements, the commissions fall away, as we've noted, or alternatively, customers complete their arrangements, new customers come on, but as you could tell from that table, the proportion of fees as a function of the – the total, if you accept the percentage I gave you before, if you go back to the – to the start of the period, you know, it's gone
45 from something like 10 per cent, being fees to something like 40 per cent being fees.

I think you said 30 per cent yesterday?---Yes, 30 or 40 per cent, yes. I'm approximating for the sake of the discussion but the point I'm making is that the commissions are phasing out over time which, as I understand it, was the approach that was a function of FOFA.

5

And that's over a period of, what, almost five years?---Yes.

Does AMP have any estimate as to how long it will take for commissions to phase out entirely?---I don't have that estimate, Mr Hodge.

10

Do you, as the head of advice – I'm sorry, as the group executive in charge of advice, have a view about whether the taking or continued taking of commissions is compatible with the purported professionalisation of financial planners?---Well, as I said before, my preference would be for fee arrangements expressly.

15

And is that because you don't think that it is compatible with the idea of financial planners being a profession, that they continue to receive commissions?---I think fees are much more consistent with a professional environment, yes.

20

I want to move to another topic, Mr Regan. And this is concerned with the triggers within AMP for a potential investigation in relation to the 90 day rule. Can we bring up AMP.6000.0051.1982. So this is the pack for the group risk and compliance committee meeting on 10 November 2015?---Yes, it is.

25

And if we go to the – I'm sorry, I should just check one thing. As I understand it, this committee meets four times a year. Is that right?---I think it is a quarterly forum, yes. I do believe there is a proposal that it become a monthly forum. I'm not sure whether that has been implemented yet.

30

How long has that proposal been on the table for?---It was suggested, I think, towards the end of 2017. So recent, is the answer to the question.

All right. If we go to page 3 of the document. You see that's the agenda for the relevant meeting?---Yes.

35

And item 6(e) is "regulatory contact"?---Yes.

And if we go over the page to page 1985. You can see the list of who comprises the committee and the attendees. It doesn't appear that at the time you were a member of the committee?---No. That would have been during my time in New Zealand.

40

I see. But Mr Caprioli, your predecessor, as the group executive for advice, was a member of the committee?---Yes.

45

And Mr Meller and Mr Salter were members of the committee?---Yes, they were.

And Mr Sainsbury. I think you referred to him before. What is Mr Sainsbury's role?---I can't recall referring to Mr Sainsbury but he's a chief customer officer of AMP.

5 I am sorry, who is the person to whom ultimately Justin Morgan would have been responsible?---Under that structure, Rob Caprioli, but if you're going back to our earlier - - -

Yes?--- - - - discussion about the registers?

10

Yes?---Yes, that would be Mr Ryman.

I see. And if we go then to – and I'm sorry, the page number is blocked out on my version but it's the sixth page of the document. Let's take that down.

15 Commissioner, we will attempt to resolve whatever the issue is about that over lunch. Mr Regan, you've exhibited the remediation plan to your statement. You don't recall?---Yes. Which tab is that?

I think it's tab 35, Mr Regan?---Thank you.

20

Just check that?---I don't think it is 35, Mr Hodge.

I'm sorry, I've misled you. I think it's – it may be 45.

25 HIS HONOUR: Have we got it up?

MR HODGE: 45, thank you?---Yes. It is 45, yes.

You've got that there, Mr Regan?---Yes, I do.

30

Now, that plan, is that the current Investigation and Remediation plan?---Mr Hodge, I became aware of this document in the course of preparing for this Commission. So I must say, that is the first time I had seen that document. But I do note from the way in which it's represented inside that it is – that it has currency to the middle of 2017.

35

I see. Well, you are aware, I assume, that the document refers to various call scripts and Q & As and letters - - -?---Yes.

- - - that were sent to clients?---Yes, I believe so, yes.

40

All right. And can I bring up AMP.6000.0051.2412. Sorry, that's a different document. I hope that's clear. So this is the internal Q&A sheet that's referred to. And if we go to page 2415. It may have been broken up as a separate document. So it should be AMP.6000.0051.2415. You will see this is the Outbound Call Script?---Yes.

45

And you understand or are aware that there's a call script for the customer centre, customer contact centre at AMP to call up clients who need to be remediated in respect of the BOLR issues?---I don't have firsthand information about the process, Mr Hodge.

5

Well, do you know that clients are being called in order to be refunded for – with money?---Yes, I believe they are.

10 Okay. Are you aware that there is a script for them to do that?---I'm not familiar with the script, no.

Okay?---I would understand that there would be, but I – again, I make the point there's a level of detail here that I'm simply not familiar with.

15 Well, can we blow up the middle of the page, the section beginning:

Operator: We want to let you know.

?---Yes, I can see that.

20

So you see the script that's being used is:

Operator: We want to let you know about a refund you are receiving from us. Some fees were charged in error to your –

25

Whatever account type was:

This happened due to an administrative error which has now been fixed. We want to apologise for the mistake.

30

?---Yes.

You agree, I'm sure, that that statement to a customer would be false if the fees were charged because of the three month rule on ringfencing?---Yes.

35

And are you aware of any decision by AMP to attempt to revise its call script or contact clients that have already been misled in this way?---No, I'm not.

All right. I tender that document, Commissioner.

40

THE COMMISSIONER: Exhibit 2.37, fee remediation outbound call script January 2016, AMP.6000.0051.2415.

45 **EXHIBIT #2.37 FEE REMEDIATION OUTBOUND CALL SCRIPT,
JANUARY 2016 (AMP.6000.0051.2415)**

MR HODGE: Now, I'm going to show you some other documents, Mr Regan. I fear that we are going to find that they are also going to be redacted in some way. And if that happens, I think there will be a hard copy that I will show you, and I suspect I can question you adequately without needing to shut this down. So can we
5 bring up AMP.6000.0019.8019. So this is the agenda for the meeting of the Advice, Culture and Compliance Board Committee on 15 December 2017?---Yes.

Now, as I understand it, this is a committee of the board. Is that right?---It is.

10 This is the committee where you noted before that the acronym is ACCC?---Yes.

Which the actual ACCC would probably not be particularly pleased about. And you're not a member of the committee because you're not a director?---That's correct.

15 But you are somebody who attends - - -?---I am.

- - - the committee meetings, although this one you seem to have attended via telephone conference?---That's correct.

20 All right. Can we go to page 18 of that document, ending in .8036. I will just see, Mr Regan, if it's possible to have provided to you a copy – a hard copy of that document.

25 THE COMMISSIONER: At some point after lunch I would be grateful to know (1) when this document was produced; (2) why it was produced in this form, if, as the premise for your question appears to be, this is centrally relevant.

MR HODGE: Yes.

30 THE COMMISSIONER: Those are matters that, perhaps, can be taken up after lunch.

MR HODGE: Commissioner, I think it appears we don't have a hard copy readily
35 available, so perhaps could I ask you to adjourn early.

THE COMMISSIONER: Well, perhaps those instructing Mr Crutchfield can supply us with a copy unredacted now.

40 MR CRUTCHFIELD: I will get instructions, your Honour. I think – it looks like it is going to result in some kind of a delay, if my friend wants to move on to another topic and we can see what we can do, your Honour.

THE COMMISSIONER: Well, it's not good enough, Mr Crutchfield.
45

MR CRUTCHFIELD: Well, I am not in a position to say whether it's not good enough or not, Commissioner, until I've got some instructions and I know what the issue is but I have heard what you've said, sir, and we will address the matter.

5 HIS HONOUR: Very well.

MR HODGE: Commissioner, could we adjourn. It may be that this hasn't – it may, in fact, be my fault. It may be that this hasn't been considered as part of the relevant page spans.

10 THE COMMISSIONER: Very well.

MR CRUTCHFIELD: I am grateful to my friend.

15 THE COMMISSIONER: 2 o'clock.

MR HODGE: Thank you, Commissioner.

20 THE COMMISSIONER: 2 o'clock.

ADJOURNED **[12.48 pm]**

25 **RESUMED** **[2.00 pm]**

THE COMMISSIONER: Yes, Mr Hodge.

30 MR HODGE: Thank you, Commissioner. Can we bring up the document we were looking at immediately before the break, which is AMP.6000.0019.8019?---Mr Hodge, I – I recall from you showing that document in relation to your earlier questioning, that, in fact, I have seen customer contact lists as a result of them being included in packs relating to that particular committee. So I was in error.

35 I see. And can we go to page 8036 of that document. It may be that we need to do hard copies of this one. We will just see. All right. We will hand up a hard copy to you - - -?---Thank you.

40 - - - Mr Regan. And one for the Commissioner.

THE COMMISSIONER: Thanks.

45 MR HODGE: So Mr Regan, just to clarify what we're looking at, this is the committee pack for a meeting of the Advice Culture and Compliance Board Committee held on 15 December 2017?---Yes.

If we go to page 15 of that document. And you will see that's a memorandum from Pally Bargri, the chief risk officer to the Advice, Compliance and Culture Committee?---Yes.

5 Dated 15 December 2017?---That it is.

It's dealing with remediation for the ongoing service fees in relation to BOLR and also terminated advisers and also the ipac breach?---Yes.

10 Out of curiosity, do you know why that document would have said to be not relevant?---I do not know the answer to that.

All right. And then if we go over to page 19 of that document: you will see this is another memorandum – sorry, page 19 of this document, you will see this is the attachment to that document which relates to the letters that are going out to the clients?---Yes.

And you see that as at this date the letter that is going out to a client still says:

20 *We want to let you know about a service fee mistakenly charged to your account. You were previously told that your service fee would be turned off but this didn't happen. As a result, AMP received this fee from you in error.*

Do you see that?---Yes, this - - -

25

At the top of the page?---Yes.

Perhaps out of fairness, I should just explain why this is being attached to Mr Bargri's memorandum. He says on the first page on page 18:

30

This paper responds to an action arising at the committee meeting on 1 December 2017 where the committee requested that management provide the committee with examples of customer remediation, correspondence, template letter and scripting.

35

?---Yes.

So what has happened is there was a meeting of this committee on 1 December 2017. One of the things they asked to see was a copy of the correspondence that is being sent out to customers that are to be remediated. Mr Bargri has provided a memorandum that attaches that correspondence. Do you agree?---Yes.

40

And what I read out to you, which referred to an error, that is – that was the correspondence that was being sent out at that time to clients?---I am just checking – the note there in regard to attachment A provides an example of the letter. That was the original BOLR breach. So I'm not sure that it's the current letter, is my only question, Mr Hodge.

45

Sorry - - -?---And the reason it's – it's an issue is that there was an error. There were letters were sent out that were incorrect, and I'm just not quite sure what this particular letter refers to. So whether that is the current letter.

5 Well, if you go to page 18?---Yes.

Continuing:

10 *Attachment A provides an example of the letter provided to customers in relation to breach 1, the original BOLR breach. Additionally call scripts are provided to staff to respond to customer inquiries are also enclosed.*

?---Yes. So I believe – I'm aware that one of the letters that went out to customers in relation to the original BOLR breach was, I believe, incorrect. And so - - -
15

Because it said it was an administrative letter?---That's correct, yes, and, in fact, we had a particular action to go back to ASIC and inform ASIC of that, is my memory - - -

20 Yes?--- - - - of the matter. But I'm not sure whether – it's a very similar letter, is all I'm getting at. So I'm just not quite sure whether it's the revised letter or the original letter which we acknowledge was incorrect.

All right. Well, we will return to your point in a moment?---Mmm.
25

If you go to page 21 of that document. See this is the inbound call question and answer script?---Yes.

And if you go to page 22, you see one of the questions is:
30

Why did this happen?

So this is a question that a customer might ask if they call up AMPs customer call centre. Is that correct?---The only point I would make, Mr Hodge, is that's dated
35 January 2016.

Yes?---And so, again, I make the point I – I'm not sure whether that was the current script at the time or whether Mr Bargri was providing the historical letter and script.

40 Well, go back to page 18 of the document, Mr Regan. What the committee asked for was examples of customer remediation correspondence, template letter and scripting. And Mr Bargri has provided this template letter and scripting as at 10 December 2017?---So I think it says the purpose attachment A provides an example of a letter
45 provided to customers in relation to breach 1, the original BOLR breach.

Breach 1 the original BOLR breach, yes?---That's why I thought it might have related to the previous iteration of the letter which we acknowledge is not correct.

Do you think there's some further iteration of the letter?---There could be.

Have you seen a further iteration of the letter?---I can't recall, Mr Hodge, I'm sorry.

5 All right. Well, in any event, can we at least agree on this: that there is – the Q&A script that was provided by Mr Bargri to the committee on 10 December 2017, which begins at page 21?---Yes.

Has a question on page 22 where the question is:

10

Why did this happen?

And the answer that the call centre staffer is to give is:

15

The customer adviser relationship will usually stop when the adviser retires or when the customer chooses to deal directly with AMP. In some instances when this has occurred an administrative error has led to the fees not being switched off and subsequently continuing to be charged to the customer.

20

?---Yes.

And insofar as that was being said to – we've got the document now – insofar as that was being said to people that were being remediated in respect of the BOLR breach, that was untrue, at least insofar as it related to people that had been subjected to the
25 90 day exception and ringfencing. Do you agree?---Yes, I do. I just make the point that, again, that's dated January 2016. So I'm not sure it's the up-to-date script. But your point is correct.

30

I will ask you again: have you seen any later script than this?---I may have. I can't recall.

All right. And can I ask, quite apart from the BOLR breach, is it AMP's position that the customer adviser relationship will usually stop when the adviser retires or when the customer chooses to deal directly with AMP?---I don't – no, if I – can you just
35 repeat the question?

The sentence, which is a bit confusing, is:

40

The customer/adviser relationship will usually stop when the adviser retires or when the customer chooses to deal directly with AMP.

Now, insofar as that means that adviser – specific adviser is no longer providing services, that must be true, that is, there's no relationship with a particular adviser if that adviser has retired?---Mmm.

45

Do you agree?---Just take me to the actual sentence, if you don't mind.

Yes. Page 22?---Yes.

At the top:

5 *The customer/adviser relationship will usually stop when the adviser retires or when the customer chooses to deal directly with AMP.*

?---I don't know whether this is directed towards a particular circumstance, but most -- most relationships, I would think, are transferred between advisers. So I'm not
10 sure whether the meaning is intended to be the incumbent adviser or an adviser relationship generally but it follows that if the adviser retires then that relationship comes to an end but the reality is that many of them go on to other relationships with other advisers.

15 Indeed, that is the premise on which AMPs advice business model operates, isn't it?---Substantially, yes.

That it is possible to sell a client as a stream of revenue?---That's correct.

20 Now, if we go to page 28 of that document. You will see this is the outbound call script that was provided to the committee on 10 December 2017, and you will see -- have you got that there, Mr Regan?---Yes, I do. I was just trying to go back to understand the context of the document, is all. But page 23, was it?

25 28, Mr Regan?---28. I beg your pardon.

And you see in the middle of the page what the operator is to say is:

30 *We want to let you know about a refund you are receiving from us. Some fees were charged in error. This happened due to an administrative error which has now been fixed. We want to apologise for the mistake*

And I take it, you make the same point which is this is dated January 2016. It would be incorrect insofar as it was said to anybody who had been subjected to the 90 day
35 rule or ringfencing, but you don't know whether there was an updated script or not?---That's correct.

Now, can I show you AMP.6000.0019.8252. So this is the next meeting of the Advice Culture and Compliance Board Committee, and you see - - -

40

THE COMMISSIONER: Have we dealt with the earlier one as an exhibit? I don't think we have, have we.

MR HODGE: No, Commissioner.

45

THE COMMISSIONER: Exhibit 2.38, agenda, Advice Culture and Compliance Board Committee, 15 December '17, AMP.6000.0019.8019, exhibit 2.38.

**EXHIBIT #2.38 AGENDA, ADVICE CULTURE AND COMPLIANCE
BOARD COMMITTEE DATED 15/12/2017 (AMP.6000.0019.8019)**

5 MR HODGE: Thank you, Commissioner.

So now this next document is the meeting pack for the next meeting of the Advice Culture and Compliance Board Committee. You see it's 23 January 2018?---Just to clarify, that's only on the screen, it's not on the pack?

10

It's only on the screen, yes?---Thank you.

That's right. Do you see that on the screen now?---Yes, I do. Could we make it a little larger, if that's okay?

15

Yes. So you will see this sets out the agenda for the meeting. If we go to page 2 of that document, .8253. These are the minutes of the preceding meeting on 15 December 2017 that have been approved by the chairman. Do you see that at the top?---Yes.

20

And it's the meeting of 15 December 2017?---Yes.

And then if we go to page 3 of the document, which is .8254. And you will see, if we can blow up section 2 at the top, 2 point – thank you. You will see what's minuted is:

25

The committee noted the memorandum from Pally Bargri titled Advice Licence Management dated 10 December 2017.

30 And that was the memorandum we've looked at:

The committee requested that in cases where fees continued to be charged to clients under the 90 day exception, the language in future client remediation letters be amended to more accurately characterise the error.

35

?---Yes.

Do you remember the discussion about this item?---And I think that was what I was referring to earlier, where I think the letter was incorrect, and that the letter was to be corrected and then we were to revert to ASIC to inform them about the nature of that being – being so.

40

All right. Well, let's just break it down. Do you recall – do you have any recollection of the meeting of the committee on 15 December 2017?---I do. I – I did telephone into that meeting.

45

Do you recall a discussion about the content of the letter?---I can't specifically recall it, Mr Hodge.

5 Do you recall why the committee decided that the language in future client remediation letters would be amended, but clients that had already received the incorrect letters would not be updated?---It – it's as I indicated earlier, I believe that was to be a matter clarified with ASIC.

10 I think I understand, but let me just see if this is accurate. The committee recognised, as far as you can recall, that there was something not quite right about those templates and call scripts?---That's correct.

15 Because insofar as they were being used in relation to clients under the 90 day exception, they were incorrect?---That's my recollection.

And they were misleading your clients?---That's correct, yes.

20 And the committee thought that for future client remediation letters, the language should be changed. Is that right?---That's correct.

And have you seen any updated draft of those - - -?---I can't recall, Mr Hodge.

25 All right. And you think there was also an issue about dealing with ASIC about what had already been said to clients. Is that right?---That's my recollection, yes.

And do you recall what the position of the committee was about dealing with clients that had already been contacted using these templates and scripts?---I can't recall.

30 All right. I tender that document, Commissioner.

THE COMMISSIONER: Meeting pack Advice Culture and Compliance Board Committee, 23 January 2018, AMP.6000.0019.8252, exhibit 2.39.

35 **EXHIBIT #2.39 MEETING PACK ADVICE CULTURE AND COMPLIANCE BOARD COMMITTEE DATED 23/01/2018 (AMP.6000.0019.8252)**

40 MR HODGE: Now, can we bring up AMP.6000.0019.8480. You see this is the agenda or pack for the next meeting of that same committee on 16 February 2018?---Yes.

45 And if we go to page 29 of that document, which is .8508. You will see this is a memorandum from Mr Bargri about customer remediation?---Yes.

And if we go over to page 30, which is .8509, can we blow up the section under the heading Client Letters to ASIC – 90 Day Exception. I will read that out for you, Mr Regan. It says:

5 *At the last meeting Advice Compliance undertook to reach out to ASIC to*
 advise that with respect to a limited cohort of clients, the fee refund letters had
 used the words “mistaken” or “error” to describe the fees paid, whereas
 having subsequently completed our investigations we are now aware that those
10 *clients were subject to the practice referred to as the 90 day exception. In*
 discussions with ASIC it was emphasised that the letters reflected our
 understanding of the root cause at the time, and that the wording used does not
 change the outcome to clients, which is that they have been remediated in line
 with AMPs remediation framework. ASIC have been provided with copies of
 the letters to review, to enable them to determine if any further action is
15 *required.*

Now, does that assist you to recall what the position was of the committee with respect to clients that had been misled by the earlier communications?---I can't really recall, Mr Hodge, I'm sorry.

20

You see the part which says:

In discussions with ASIC it was emphasised that the letters reflected our
 understanding of the root cause at the time and that the wording used does not
25 *change the outcome to clients which is that they have been remediated in line*
 with AMPs remediation framework.

That seems to suggest that the position that AMP was adopting with ASIC was to say the letters were okay because they reflected what we said at the time – what we
30 thought at the time, and, anyway, no harm, no foul with respect to the clients?---I – I would agree with you.

And that the position of AMP was that it didn't want to have to contact clients that it had already contacted to correct its misleading of them?---Mmm.

35

Was that the position of AMP?---I'm unclear. My sense is – and I – I would be going to speculation to go any further so I will resist doing that.

All right. I will move back to a different topic.

40

THE COMMISSIONER: Are you tendering this one?

MR HODGE: I tender that document, yes, Commissioner.

45 THE COMMISSIONER: Meeting pack Advice Culture and Compliance Board
 Committee, 16 February '18, AMP.6000.0019.8480 will be 2.40.

EXHIBIT #2.40 MEETING PACK ADVICE CULTURE AND COMPLIANCE BOARD COMMITTEE DATED 16/02/2018 (AMP.6000.0019.8480)

5 MR HODGE: Now, the other document we attempted to look at earlier was AMP.6000.0051.1982 which was the group risk and compliance committee meeting on 10 November 2015. Can we bring that up.

THE COMMISSIONER: Can I have the number again?

10

MR HODGE: Sorry, yes, it's AMP.6000.0051.1982.

THE COMMISSIONER: Thank you.

15 MR HODGE: You recall we started to look at this document, Mr Regan?---Yes, Mr Hodge.

Then can we – we looked already at page 3. We will just briefly go to that, which shows the agenda. And you will see 6(e) is Regulatory Contact?---Yes.

20

And then if we go to page 228. And can we blow up row (c). So this is setting out the reporting to the group risk and compliance committee as at the end of 2015 in relation to the BOLR breaches. Do you see that, Mr Regan?---Yes, I do.

25 Now, obviously, this is in error or misleading in the sense that it says:

In relation to administrative failure to turn off ongoing fees for clients –

30 Well, that is what had been reported to ASIC so in that sense it's not in error, but it's not an accurate reflection of the reason that fees are – had continued to be charged. What I'm interested in is this: you will recall we looked at the 2015 external audit report of PwC who emphasised that there was no process for root cause analysis within AMP?---Yes.

35 You recall that? And as far as you are aware, the notification of this breach to the Group Risk and Compliance Committee did not cause them to commission any investigation into the root cause of this failure?---I'm not aware, Mr Hodge.

40 Well, you're not aware of any such analysis or investigation having been done?---No, I'm not.

45 And if that – if such a breach was now reported to the Group Risk and Compliance Committee would a different attitude be taken?---It would be different, in that since that time there has been a risk and compliance committee formed that I chair and that's referred to in my witness statement. So it would review such incidents, and – before they're passed on to the Group Risk and Compliance Committee. So I do believe there would be more rigour today.

Well, I'm not sure you're quite answering my question. What I'm trying to get at, Mr Regan, is that no investigation into the root cause of the breach was commissioned in 2015. You agree?---As far as – yes, I think that's correct.

5 And is this a case where there would now be a root cause analysis done if such a breach was brought up to the Group Risk and Compliance Committee?---I believe it would.

10 All right. Now, then, the next document that I want to go to is AMP – sorry, I tender that document, Commissioner.

THE COMMISSIONER: Group Risk and Compliance Committee meeting pack, meeting 4 of 2015, AMP.6000.0051.1982, exhibit 2.41.

15

EXHIBIT #2.41 GROUP RISK AND COMPLIANCE COMMITTEE MEETING PACK, MEETING 4 OF 2015 (AMP.6000.0051.1982)

20 MR HODGE: And the next document I will go to is AMP.6000.0007.4466. Now, you see this is a year later. The papers for the Group Risk and Compliance Committee meeting of 14 November 2016?---Yes.

25 And if we go to page 39 of that document. You will see this is a quarterly update to the committee in relation to adviser monitoring?---Yes.

30 And I think I had understood from what you said yesterday that when it comes to advisers failing to provide services in exchange for fees, the only way that AMP has to detect that is to conduct an audit of the adviser's practice. Is that right? Other than complaints?---Yes, I – I think that's correct.

Can you think of any other way that they can detect it?---I'm just having a mental blank, I'm sorry.

35 That's all right?---I – I do recall – I do think there might be but I just can't bring it to mind at the moment.

All right. Well, you see about two-thirds of the way down the page it says:

40 *526 adviser audits have been deferred for various reasons. 47.5 per cent of these relate to advisers who have informed us that they have no intention to write any business.*

45 ?---Yes.

And as I understand it, that means that – I’m sorry, we should go over the page to see this more clearly. So over to page 41. Sorry, 40. No, I’m sorry, 41. Yes, there we go. You see this explains it in more detail. In the second paragraph:

5 *There are 526 audits which are currently deferred. 47.5 per cent of these relate to advisers who have informed us that they have not provided advice during the relevant period leading up to the scheduled audit date and have no intention to do so.*

10 Do you see that there?---Yes, I do.

 What I’m trying to understand is given that one of the problems faced by AMP is that it has advisers charging for services that it – that they are not providing, why would it refrain from auditing advisers simply because they say they’re not going to
15 provide any advice during the relevant period?---I wasn’t involved, obviously, in the operation at that time, but I think we would also acknowledge that the audit process requires remediation. I think it would be acknowledged that the audit process was not as effective as it should have been, which is why we’ve embarked on a complete review of that program under what’s referred to in my witness statement as audit 2.0.

20

All right. I tender that document, Commissioner.

 THE COMMISSIONER: Group Risk and Compliance Committee meeting papers, 14 November 2016, AMP.6000.0007.4466 will be exhibit 2.42.

25

EXHIBIT #2.42 GROUP RISK AND COMPLIANCE COMMITTEE MEETING PAPERS DATED 14/11/2016 (AMP.6000.0007.4466)

30

 MR HODGE: Now, Mr Regan, I want to now move to the topic of why, from the perspective of AMP, these issues of not switching off fees for service occurred. And you’ve given some evidence about that in your statement. If we can go first to paragraph 164 of your statement. It should be coming – I’m sorry, it’s page 33 of the
35 statement?---Yes, I have it open.

 Thank you. And what you repeat here is something that was said in the AMP Group’s submission to the Commission. I just want to understand some of the things you say about this. Can we start with subparagraph (b), that one of the reasons is:

40

Complex and manual systems for switching off ongoing service fees.

?---Yes.

45 And can you explain to us, at least when it comes to AMPs own internal products, that is, its own platforms, is it difficult for AMP to switch off the charging of fees?---I – I don’t have the detail of it, Mr Hodge.

All right?---I've relied on what I've been provided with.

Okay. Do you not know why it is that the complexity or the manual systems presents a difficulty to switching off fees?---I don't have firsthand knowledge, I'm sorry.

5

Okay. And then the second point – I'm sorry, the third point is subparagraph (c), that:

10 *There's no end-to-end accountability for the process of switching off ongoing service fees.*

Do you know what that means?---I understand it means that it's a distributed process across a number of functional areas, but beyond that, I can't help you.

15 No one is responsible for checking that it goes through at every stage. Is that the point?---I think there's implicit in that a verification issue.

And then the third – the fourth point is:

20 *Poor understanding of the policies and processes for switching off ongoing service fees.*

Do you know what that means?---I think that means that it has become evident that people involved in the business haven't been sufficiently well trained to have such an understanding.

25

And then the fifth point is:

30 *Loss of corporate knowledge in relation to the processes and requirements in relation to the BOLR system, which was exacerbated by corporate restructurings.*

Do you know what that means?---Again, I wasn't in the business at that time, but my understanding would be that the restructure that's being referred to there was that transfer of the relevant function referred to, I think, as register management generally, was shifted within the company, both in terms of operation but also in terms of geographic location from Sydney to Melbourne. So that caused, I believe, an exodus of some staff which I think is part of the problem.

35

40 And then the sixth point is:

Failure to escalate matters of concern.

45 Can you explain what that means?---That touches on the culture discussion that we had earlier, Mr Hodge, and I think it's evident that there was inadequate escalation.

That is, that people – that employees that are further down the chain have not escalated it or reported the issues all the way up the chain?---Yes, I think that's correct.

5 And does that mean reported up to the GLT?---It could mean that, yes.

And then the seventh point is:

An inadequate control environment.

10

What does that mean?---Again, if we go to that discussion this morning, I think I mentioned six issues that drive the way in which the business operates, controls being the critical one, and I think we acknowledge that the control environment wasn't as strong as it should have been.

15

And then point (a) is:

Insufficiently clear policy/guidance in relation to the requirements for switching off ongoing service fees

20

And paragraph 165 seems to provide an explanation of what that's said to mean which is that:

An aspect of the insufficiency of clear policy and guidance was the business practice which developed whereby exceptions to the BOLR policy were granted to allow ongoing service fees to remain on when customers were transferred into the BOLR pool. This business practice is known as the 90 day exception

25

I just want to understand what it is you are saying here in your evidence in these paragraphs. Why is the fact of a business rule an example of insufficiently clear policy or guidance?---I believe that refers to the fact that the document – the BOLR policy wasn't explicit in that regard.

30

Didn't explicitly say what, that you should leave fees on for 90 days or that you shouldn't leave fees on at all?---That's correct.

35

No, no?---The latter.

The latter. Does – as you understand it, to any extent does the Group Leadership Team take responsibility for any of the failures in relation to BOLR?---Yes.

40

If you go to paragraph 225 of your statement, which is on page 44, you note that:

It appears that no GLT member received any of the internal legal advices.

45

And you say:

Mr Caprioli was not provided with a copy of the relevant advice.

?---That's based on the findings of the Clayton Utz report, I believe.

5 I understand. Was there a particular reason that you wanted to emphasise that point?---As I recall, there was a suggestion at one point that Mr Caprioli had been provided with that legal advice. I think that was in one of the versions of the Clayton Utz report, and then I think there was, as has been the case with other issues, an attempt to source whether or not that was the case.

10

Well, we will come to that in a moment, but what does it matter whether Mr Caprioli received a legal advice telling him that it wasn't lawful to continue to charge clients when you weren't going to provide them with any services?---Well, I think, as far as Mr Caprioli's understanding of the issue, I can't speak to that.

15

Yes, but you've emphasised that point at paragraph 225?---Mmm.

That was one of the facts you've picked out from the Clayton Utz report. Why is that a point that, for the purposes of your evidence, is significant?---The point, I think, we – I'm making simply is that as far as we can understand, Mr Caprioli wasn't given that particular legal advice.

20

In fact, you say no GLT member received any of the internal legal advices?---That's as I understand it.

25

But you agreed with me it's obvious that this isn't something that you can lawfully do?---Yes, I agree.

What does it matter whether any GLT member received a specific internal legal advice telling them that this wasn't lawful?---I – can I just check back to the question. So it's responding to the question 12(c), isn't it? So – I presume you thought that it was necessary to complete the question.

30

Page 28?---28, is it? Thank you.

35

So 12(c) is:

When and how did officers or employees of AMP Limited first become aware of these matters?

40

?---Yes. I can't really add anything further to the – to the answer I've given you, Mr Hodge.

All right. Can we go to paragraph 34 of your statement. And at paragraph – I'm sorry, we will just wait for that to come up. And in paragraph 34 you explain that once the board was alerted to these things, Clayton Utz was appointed to undertake

45

an external and independent investigation of the matters set out in the letter of appointment?---Yes.

5 And there was a meeting that occurred after that report was completed that you attended with the chairman, Ms Brenner, Mr Meller, Mr Salter, and Mr Medcraft and Mr Kell of ASIC. Do you recall that?---Is this the meeting of the - - -

10 You refer to it in paragraph 30 of your statement – I’m sorry, 36 of your statement?---Yes.

You recall attending that meeting?---Yes.

15 And at that meeting, ASIC were provided with a copy of the Clayton Utz report?---Yes, they were.

And they were also provided with a copy of the instructions to ASIC?---Of the instructions to ASIC?

20 THE COMMISSIONER: Instructions to Clayton Utz.

MR HODGE: I’m sorry, instructions to Clayton Utz?---I can’t recall.

25 Do you remember a discussion at that meeting about what Clayton Utz had been asked to do?---No, I - - -

Do you remember that meeting at all?---I remember the meeting but I can’t recall specifically the – that – that discussion.

30 Do you remember that it was – or do you remember whether it was explained to ASIC that Clayton Utz had been instructed to undertake an independent investigation of what had occurred?---Yes.

35 Can we bring up ASIC.0018.0001.3383. You see this is an email from Ms Baker Cook of AMP to Ms Zhang of ASIC. There’s two emails. If you look at the email at the bottom of the page, you will see that it’s an email dated 17 October 2017. And it says:

40 *Please find attached soft copies of the following hard copy documents which were produced to ASIC during the meeting between ASIC and AMP yesterday afternoon.*

And the first document is:

45 *Letter of instructions from AMP chairman to Clayton Utz dated 5 June 2017.*

And the second is the Clayton Utz report?---Yes.

All right. You don't suggest that that's incorrect, that the - - -?---No.

- - - instructions weren't provided?---No.

5 Thank you. I tender that document.

THE COMMISSIONER: Exhibit 2.43, emails 17 October '17 between Baker Cook and Zhang, ASIC.0018.0001.3383.

10

EXHIBIT #2.43 EMAILS BETWEEN BAKER COOK AND ZHANG DATED 17/10/2017 (ASIC.0018.0001.3383)

15 MR HODGE: And then can we bring up tab 2 of Mr Regan's statement, which is the instructions to Clayton Utz. And if we go to page 2 of that document and blow up paragraph 2.1. You will see it says:

20 *On behalf of the AMP board, the CEO and I wish to appoint and instruct Clayton Utz to undertake an external and independent investigation of the above matters ... this investigation will be entirely independent of the business and is commissioned exclusively by the board through me and the CEO.*

Can you see that there?---Yes.

25

And in 2.2(a) it explains that day-to-day interactions are to be between you and Mr Salter for AMP with Clayton Utz?---Yes.

30 And also that any issue of concern arising regarding a GLT or AMP board member – if any issue of concern arises with respect to a GLT or AMP board member, Clayton Utz is to deal directly with Ms Brenner?---Yes.

35 Now, you made a reference before to a draft report of Clayton Utz. It doesn't appear as if these instructions refer to the provision of draft reports. Is that the case?---I – without reading the document, I couldn't be sure, but I believe that that would be the case, that it wouldn't be referring to draft reports

To the provision of draft reports?---Yes.

40 For review by AMP?---Yes.

45 Because it's supposed to be an entirely independent investigation?---Well, except that there's – there's a process that was undertaken to review various elements for thoroughness, and the like.

Do you know how many draft reports were provided by Clayton Utz to AMP?---No, I don't believe I do.

Can we bring up RCD.0002.0001.1170. You will see this is a notice to produce that was issued by the Commissioner to AMP. If we go to page 2, subparagraph (c) required:

5 *Any draft version of the Clayton Utz report provided to AMP Limited.*

Commissioner, I tender that document.

10 THE COMMISSIONER: What's the date of the notice – or the number of the notice to produce, please?

MR HODGE: NP160.

15 THE COMMISSIONER: NP?

MR HODGE: 160.

20 THE COMMISSIONER: Notice to produce AMP Limited NP160, RCD.0002.0001.1170 will be exhibit 2.44.

**EXHIBIT #2.44 NOTICE TO PRODUCE AMP LIMITED NP160
(RCD.0002.0001.1170)**

25 MR HODGE: Now, can I then show you document RCD.9999.0013.0001. This is a spreadsheet that sets out documents that have been coded as being responsive to various notice to produce categories, and you will see, if we just scroll down a little bit, that there is a list of documents starting at row 25 that are documents responsive to NP160, subparagraph (c). Can I suggest to you that Clayton Utz provided 25
30 drafts of their report to AMP?---I'm not aware of all of those, but that would appear to be the case, yes.

35 That would what, sorry?---That would appear to be the case, yes, based on what you're saying there.

And can we then bring up RCD – I am sorry, I should tender that spreadsheet, Commissioner. That's actually an extract.

40 THE COMMISSIONER: How should I describe the spreadsheet?

MR HODGE: I think an extract of the records from Law In Order of the production of documents in response to notices to produce.

45 THE COMMISSIONER: Exhibit 2.45 will be spreadsheet extract recording production in response to notices to produce, RCD.9999.0013.0001.

**EXHIBIT #2.45 SPREADSHEET EXTRACT RECORDING PRODUCTION
IN RESPONSE TO NOTICES TO PRODUCE (RCD.9999.0013.0001)**

5 MR HODGE: Thank you, Commissioner. Then can we bring up
RCD.0002.0001.1314. This is a further notice to produce issued by the Commission
to AMP, and you will see there's only one category of documents required by this
notice, which is:

10 *Any documents comprising or recording communications between AMP
Limited and Clayton Utz in the period 5 June 2017 to 16 October 2017
concerning any draft versions of the Clayton Utz report or the contents of the
Clayton Utz report.*

15 ?---Yes.

Have you seen this notice before?---I don't believe so.

I tender that document, Commissioner.

20

THE COMMISSIONER: Notice to produce to AMP Limited, NP216,

RCD.0002.0001.1314 will be exhibit 2.46.

25

**EXHIBIT #2.46 NOTICE TO PRODUCE TO AMP LIMITED, NP216
(RCD.0002.0001.1314)**

30 MR HODGE: And then can we bring up RCD.9999.0012.0002. Can I explain, Mr
Regan, you may not be aware, that AMP produced its response to this notice to
produce in four tranches. Are you aware of that?---No.

And so this is just the spreadsheet setting out the response to tranche 1.

35 Commissioner, rather than bringing them up on the screen, they're just going to look
like this. Can I just read out what the relevant document numbers are and I will
tender them as a group for these spreadsheets.

THE COMMISSIONER: Yes.

40

MR HODGE: The next one is RCD.9999.0012.0002. Tranche 3 is
RCD.9999.0012.0003. And tranche 4 is RCD.9999.0012.0004. And I tender those
extracts.

45 THE COMMISSIONER: The first one is 0001, is it?

MR HODGE: Yes.

THE COMMISSIONER: And they are what? Spreadsheets recording response to notice to produce - - -

5 MR HODGE: NP216 subparagraph (a), although there is only a subparagraph (a) of that document.

THE COMMISSIONER: Exhibit 2.47 will be four spreadsheets recording tranches 1 to 4 of production by AMP Limited in response to notice to produce NP216 being documents RCD.9999.0012 respectively 0001, 0002, 0003 and 0004. Exhibit 2.47.
10

MR HODGE: Thank you, Commissioner.

15 **EXHIBIT #2.47 FOUR SPREADSHEETS RECORDING TRANCHES 1 TO 4 OF PRODUCTION BY AMP LIMITED IN RESPONSE TO NOTICE TO PRODUCE NP216 (RCD.9999.0012.0001, RCD.9999.0012.0002, RCD.9999.0012.0003, RCD.9999.0012.0004)**

20 MR HODGE: Now, what those four spreadsheets record, I will summarise, Mr Regan, which is that AMP had located, at the time that it finished production in response to tranche 4, which was very late Sunday night or early Monday morning, 741 documents falling within that category of which AMP withheld 109 on the basis of legal professional privilege. Were you aware that there was that volume of
25 communication between AMP and Clayton Utz about the contents of the draft report?---No, I don't believe so.

Now, can I then have brought up AMP.6000.0054.6198. So you will see, just as an example of us moving through here, that on 18 September 2017, Clayton Utz had
30 provided a draft report to Mr Salter, the general counsel of AMP, and Mr Salter had then marked it up with some comments and sent it back. Is that consistent with what you had understood had happened in relation to the draft report?---As I understood it, there was a process between Clayton Utz and AMP to, effectively, review the document through draft versions to a final.

35 What does that mean? What was the process aimed at doing?---Well, I think, as I indicated before, I believe it's to ensure the thoroughness of the document.

40 All right.

THE COMMISSIONER: Sorry, ensure the?---Thoroughness of the document.

Thoroughness?---Yes.

45 MR HODGE: I tender that document, Commissioner.

THE COMMISSIONER: Emails between Salter and Mavrakakis of 18 September '17, AMP.6000.0054.6198 will be exhibit 2.48.

5 **EXHIBIT #2.48 EMAILS BETWEEN SALTER AND MAVRAKIS DATED 18/09/2017 (AMP.6000.0054.6198)**

MR HODGE: Sorry, Commissioner, I just need one moment to get my bundle.
10 Commissioner, I apologise. Could I have – Commissioner, could I ask the indulgence of adjourning for two minutes while we find - - -

THE COMMISSIONER: Yes.

15 MR HODGE: - - - the correct document. Thank you.

THE COMMISSIONER: Let me know when you're ready to go.

20 **ADJOURNED** [2.57 pm]

RESUMED [3.06 pm]

25 THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: I apologise, Commissioner. Can we bring up document AMP.6000.0054.6294. You will see, if we blow up the email at the bottom of the
30 page, this is an email sent on 19 September 2017 from Clayton Utz to Mr Salter which says:

Attached is a copy of our draft BOLR investigation report for provision to the CEO and group executive, Advice, Australia and New Zealand.

35 ?---Yes.

So the CEO is Mr Meller?---That's correct.

40 And the group executive of Advice is you?---That's correct.

And do you remember reviewing the draft of that report?---Yes, I believe I do.

45 And do you remember having marked up any changes yourself to the document?---Yes, I would have.

Do you remember what those changes were?---No.

Were they substantive changes?---Not substantive changes, but comments. But no, not – I don't believe substantive changes.

5 Right. Were you aware of what comments Mr Meller made on the draft report?---I – no, I don't think I saw a copy of Mr Meller's comments.

Okay. And can we then bring up – go to the email at the top of the page and blow that up. You will see Mr Salter's reply is:

10 *Enjoy your break and we will be in contact on Thursday if there is feedback from Craig and Jack requiring any amendments to the report.*

?---Yes.

15 Do you recall having participated in a telephone conference with the solicitors from Clayton Utz?---Yes.

And was Mr Meller also on that call?---He was on the call, yes.

20 And did that occur on 21 September 2017?---It would be about that time.

All right. And what do you recall being discussed during that call about the content of the report?---The content of the report, really not a great deal. I do recall, and – and it was a teleconference that included, if I remember correctly, Mr Mavrakis on the telephone and also Ms Baker Cook on the call as well. So I think there were five people on the call.

Do you recall a discussion during that telephone call about Mr Meller's name appearing in the report?---Yes, I do.

30 And what do you recall about that?---I recall – and I think Craig made a comment to the effect that he was declaring a personal conflict in relation to his comment because he was part of a group of people that had been interviewed as part of the investigation about which there was no findings made, and/or that they were incidental – and these are my words. I can't recall exactly what was said at the time. And asked the question is it appropriate to include all of those people.

Did he ask for his name to be removed from the report?---No. No. He asked the question as to whether or not it was – well, whether it was necessary for all of those people of – of which he was one – to be included in the report.

Do you recall him raising an issue about addressing individual's culpability?---No.

45 All right. I tender that document, Commissioner.

THE COMMISSIONER: Emails between Mavrakis and Salter, 19 September 2017, AMP.6000.0054.6294, exhibit 2.49.

EXHIBIT #2.49 EMAILS BETWEEN MAVRAKIS AND SALTER DATED 19/09/2017 (AMP.6000.0054.6294)

5 MR HODGE: Thank you. Can we now bring up AMP.6000.0054.6318. And it's a
bit confusing but this is an email sent on 24 September by Mr Mavrakis of Clayton
Utz to Mr Salter attaching a revised version of the BOLR report. So this is, I would
suggest, about three or four days – I'm sorry, three days after the telephone
conference between you and Mr Meller and Mr Salter and Ms Baker Cook. You're
10 not certain about the date?---And Mr Mavrakis.

Sorry?---And Mr Mavrakis.

And Mr Mavrakis. But do you agree with me that the date of the call was 21
15 September, or are you not sure?---I wasn't disagreeing.

Okay?---Yes.

So perhaps if I – just to make good that proposition, first – so another version of the
20 report was sent on 24 September 2017. Do you see that?---Yes.

And I tender that document, Commissioner.

25 THE COMMISSIONER: Exhibit 2.50 will be email 24 September '17, Mavrakis to
Salter, AMP.6000.0054.6318.

EXHIBIT #2.50 EMAIL MAVRAKIS TO SALTER DATED 24/09/2017 (AMP.6000.0054.6318)

30

MR HODGE: And can we bring up AMP.6000.0054.6312. This is just to establish
the timing. You will see this is an email sent on 21 September saying:

35 *Craig is running 10 minutes late.*

?---Yes.

I tender that document, Commissioner.

40

THE COMMISSIONER: Email Salter to Baker Cook, 21 September '17,
AMP.6000.0054.6312 will be exhibit 2.51.

45 **EXHIBIT #2.51 EMAIL SALTER TO BAKER COOK DATED 21/09/2017 (AMP.6000.0054.6312)**

MR HODGE: And then can we bring up AMP.6000.0052.0924. So you see this is a draft of the report. This is the track changes version that was sent in response by Mr Mavrakis to Mr Meller. And can we go – sorry, Mr Mavrakis to Mr Salter. And can we go to page 6 of that document. I’m sorry, page 6, it’s .0932. And you will see in the earlier version of the document - can we pop out that centre section where the tracking is. The earlier version of the report had said:

10 *We identified the following additional personnel involved in either the BOLR decision-making and/or the internal process to report to ASIC following the 2015 breach report.*

And there had been four additional people, the first of whom was Mr Meller. Mr Meller is the only person who is struck through and removed from the document. Do you know why Mr Meller’s name was the only one removed from the document?---No, I don’t. But what I would add is that in the discussion that was referred to previously, when the – when it ensued as we went through whether or not other people’s names would come out, there was a particular discussion regarding Mr Meller being separately advised to the board as having been part of the investigation.

20 I’m sorry, can you say that again?---So that to the extent that there was a discussion about Mr Meller’s name being amongst that cohort of people that I referred to earlier – and that’s my recollection of – of the question that was asked – that if his name was not to be in the report, it would only be on the basis that it would be separately advised to the board as to any findings or the nature of the interview with Mr Meller.

25 And so why would Mr Meller’s name not appear in this report and be separately advised to the board.

30 THE COMMISSIONER: Sorry, speak up, Mr Hodge. I missed it.

MR HODGE: I apologise, Commissioner.

35 Why would Mr Meller’s name not appear in this report but be separately advised about to the board?---It was in the context of the question that he asked previously that I discussed with you, and that is where people weren’t seen as being central to that investigation, that they would consider taking those names out of the report. But in Mr Meller’s case, because of the role that he had, that if his name wasn’t to stay in the report then it would be separately referred to the board.

40 But his name was the only name to come out of the report?---So it would seem from that, yes.

I tender that document, Commissioner.

45 THE COMMISSIONER: Have we got a date on the mark-up version of the report, Mr Hodge, or some other - - -

MR HODGE: The date is, as I understand it, 24 September 2017.

THE COMMISSIONER: Draft Clayton Utz report 24 September '17, mark up AMP.6000.0052.0924 will be exhibit 2.52.

5

EXHIBIT #2.52 DRAFT CLAYTON UTZ REPORT MARK UP DATED 24/09/2017 (AMP.6000.0052.0924)

10

MR HODGE: Thank you, Commissioner. And then can we bring up AMP.6000.0054.6392. And you will see what's – what this chain of emails is, first, an email from Mr Salter to you and to Mr Regan. That's the first email in time on 19 September 2017, and in that email Mr Salter refers to the fact that:

15

Clayton Utz are preparing a further advice which will be separate from the report and will not be disclosed to ASIC. This will deal with whether they believe our conduct involved any breaches of the Corporations Act.

20 ?---Mmm.

Now, is that the advice you're referring to that was to refer to Mr Meller?---No.

25 Okay. And then you will see that's then being forwarded on by Mr Mavrakis to – I'm sorry, by Mr Salter to Mr Mavrakis so that he can see what was – what had been sent by Mr Salter to Mr Meller and Mr Regan, and so that Mr Mavrakis could then deal with providing an email of the draft report to the chairman, Ms Brenner?---Yes.

I tender that, Commissioner.

30

THE COMMISSIONER: Emails between Salter, Meller, Regan and Mavrakis, 24 September '17, AMP.6000.0054.6392, exhibit 2.53.

35 **EXHIBIT #2.53 EMAILS BETWEEN SALTER, MELLER, REGAN AND MAVRAKIS DATED 24.09.2017 (AMP.6000.0054.6392)**

40 MR HODGE: Then can we bring up AMP.6000.0054.6489. This is a chain of emails between Mr Mavrakis and Ms Brenner, where Mr Mavrakis sends a copy of the draft report on 25 September 2017 to Ms Brenner. Do you see that?---Yes.

45 And then Ms Brenner indicates that she's going to speak to Mr Mavrakis?---Yes, I understood that there would be a discussion between Mr Mavrakis and Ms Brenner to settle the report when it was eventually so.

I tender that document, Commissioner.

THE COMMISSIONER: Emails between Mavrakis and Brenner, 25 September '17, AMP.6000.0054.6489, exhibit 2.54.

5 **EXHIBIT #2.54 EMAILS BETWEEN MAVRAKIS AND BRENNER DATED 25/09/2017 (AMP.6000.0054.6489)**

10 MR HODGE: If we bring up AMP.6000.0054.6500. So this is then an email chain between Mr Mavrakis and Mr Salter. We're starting at the bottom. Mr Salter says:

Nick, hi. Can you please let me know the outcome of your call with Catherine. Also, are we now to assume your report is in final form?

15 Then Mr Mavrakis says:

Catherine and I spoke about several aspects of the BOLR report.

20 That's on 4 October 2017. And then later that day Mr Salter says to Mr Mavrakis says:

I spoke to Catherine earlier today. She said that she relayed a number of comments to you over the phone last week and confirmed that she has no more. Can you please let us have the next draft with the amendments marked up today?

?---Yes.

30 I tender that document.

THE COMMISSIONER: Emails between Mavrakis and Salter, 4 October '17, AMP.6000.0054.6500, exhibit 2.55.

35 **EXHIBIT #2.55 EMAILS BETWEEN MAVRAKIS AND SALTER DATED 04/10/2017 (AMP.6000.0054.6500)**

40 MR HODGE: And could we then – I'm sorry, just before we do that, can I ask, is this all consistent with what you expected to occur in relation to Clayton Utz's independent report?---The report was for the benefit of the board, but I think the – as the letter of instruction refers, there was to be a degree of interplay between business and Mr Mavrakis. What was clear though was that Mr Mavrakis would settle the – the report with the board.

45 I must I say I don't understand that at all. Let's go to tab 2 of the exhibits to your document. This is the instructions to Clayton Utz. Can you point us – can you point

us to the part of the instructions which you say envisaged interaction between – I think you used the word “business” and Clayton Utz, and that Clayton Utz would settle the report?---Well, I’m just referring to instructions, communications, day-to-day interactions between – and this is at 2.2(a) - - -

5

Let’s pop it out, 2.2(a). Yes?---And so just very much as is reflected in that paragraph.

I see. Instructions and other specific communications are to occur between you and Mr Salter, and this, as you understand it, this is just ordinary instructions and other specific communications?---Yes, it – yes, that’s correct.

10

All right?---As well as, obviously, then I think if you go to – at (c), the timetable on page 3 - - -

15

Take that down?--- - - - indicative timetable:

Clayton Utz will provide regular updates - - -

20 Continuing:

On the progress of the investigation.

?---Yes, yes.

25

And your understanding is that envisages the exchanging of drafts with comments and suggestions from AMP?---Well, it certainly evolved into that. I’m not sure, really, what I expected in terms of the actual process. It was a review that was essentially being conducted by Clayton Utz and the fact that they were engaging with the business presumably was consistent with their – their instructions.

30

You engage – or were you aware of AMP engaging independent auditors to audit the business?---To audit?

35 To audit, you engage external auditors to audit the business?---Yes.

And is it the practice of AMP, when dealing with the reports of external auditors, to get drafts and make comments and changes to those reports?---Well, there is a process that – that occurs with draft audit reports where they get put to management, management respond to those. So, yes, there is work-ups involved in the production of external audit reports, internal audit reports. In the case of this particular matter, I think Mr Mavrakis was seeking to check in and understand whether or not there were any issues that were being missed, and generally speaking, progress the report.

40

All right. Can we bring up the original Clayton Utz report – I’m sorry, the final Clayton Utz report, which is 6000.0038.0001 [erratum: AMP.6000.0010.0440] – or tab 3 to Mr Regan’s statement. And go to paragraph 83 of that document. Now, you

45

see in the final version of the report that there's a sentence that appears there which is:

5 *There is no evidence to suggest that Mr Caprioli was separately sent this version of the memorandum even though it was addressed to him.*

?---Yes.

10 All right. Can we take that down. Can we bring up the document which is AMP.6000.0054.6508. You will see on 5 October 2017 that Mr Salter sent an email to Mr Mavrakis and what he has attached is a version that he has marked up some comments and changes on?---Right.

15 Do you see that there? Do you see the last sentence is:

Can you please consider the attached and the foregoing and now issue your final so that we can distribute it internally.

20 ?---Yes.

And you see there's an attachment at the top, AMP BOLR report – 4 October.PDF?---Yes.

25 I tender that email, Commissioner.

THE COMMISSIONER: Exhibit 2.56, emails between Salter and Mavrakis, 4 October 2017, AMP.6000.0054.6508, exhibit 2.56.

30 **EXHIBIT #2.56 EMAILS BETWEEN SALTER AND MAVRAKIS DATED 04/10/2017 (AMP.6000.0054.6508)**

35 MR HODGE: Then can we bring up the attachment to that email which is AMP.6000.0054.6510. And can we go to page .6545 of that version. Thank you. Can you zoom in on paragraph 83 and the comments around paragraph 83. So you see this is an earlier version of that paragraph we looked at a moment ago. And you will see that what had originally been said was:

40 *It is likely that Mr Caprioli was shown or provided the information contained in Mr Morgan's email of 19 May 2015 in the memorandum.*

And Mr Salter's mark-up is to delete "likely" and say:

45 *Is likely too strong. Rather is "possible".*

And you will see he's added another comment over to the side which is:

Is possible the better term? Do we need to add that there is no direct evidence that Rob saw this information?

Do you see that?---Yes.

5

Were you aware that Mr Salter had a particular emphasis on what was said about the knowledge of Mr Caprioli?---Yes, in the sense that the – and it was the issue we touched on before, where there was a suggestion that Mr Caprioli was given a copy of the legal advice, and I think that had come through in one of the versions from Clayton Utz, which was, as I understood it, incorrect. So it was a matter of seeking to correct the record.

10

Then if we go to .6550. You will see there was a paragraph that read:

15

Mr Caprioli does not appear to have received any of the internal legal advices. However, he was provided with Mr Morgan's summary of the Turner 19 May advice email as explained in paragraph 83 to 85 above.

And his comment is:

20

Are we sure of this? See my earlier comment.

?---Yes.

25

Again, you say that's just consistent with Mr Salter checking the facts?---The only conversation I could remember about the issue involving Mr Caprioli was related to correcting the issue of whether or not he got the legal advice.

I tender that document, Commissioner.

30

THE COMMISSIONER: Exhibit 2.57 will be draft Clayton Utz report with annotations apparently by Salter, AMP.6000.0054.6510.

35

EXHIBIT #2.57 DRAFT CLAYTON UTZ REPORT WITH ANNOTATIONS BY SALTER (AMP.6000.0054.6510)

40

MR HODGE: And then can we bring up AMP.6000.0052.1590. And you will see Mr Mavrakis – I'm sorry, this is – we've jumped to the wrong date. Can we bring up instead of that AMP.6000.0054.6596. So you will see a version gets sent back. You can see this in the email at the bottom from Mr Mavrakis back to Mr Salter, and Mr Salter responds and says:

45

Thanks, Nick. I've marked up a couple more changes on the attached. I'm still not sure we have nailed 83 and 91(e). Can you please consider my changes, or am I factually wrong? Can you please reconsider these paragraphs?

And then – I tender that document, Commissioner.

THE COMMISSIONER: Emails between Salter and Mavrakis, 5 October 2017, AMP.6000.0054.6596 will be exhibit 2.58.

5

EXHIBIT #2.58 EMAILS BETWEEN SALTER AND MAVRAKIS DATED 05/10/2017 (AMP.6000.0054.6596)

10

MR HODGE: Thank you. And then can we bring up AMP.6000.0054.6600, which is the attachment to that email. So this is a further version of the report. If we go to page .6635. You see, again, Mr Salter returns to paragraph 83, and Clayton Utz have already made the change to change “likely” to “possible”, and Mr Salter is suggesting that they further add the words:

15

Though we have no direct evidence on this point.

Can you see that?---Yes.

20

And then if we go to page .6640. You will see Clayton Utz have made some changes already which were to say:

25

Mr Caprioli does not appear to have received any of the internal legal advices, and he cannot recollect receiving them.

And then they’ve deleted the words:

30

And he was provided with Mr Morgan’s summary of the Turner 19 May advice email.

And then over the page, .6641, you will see Clayton Utz had added some attempted qualifications to these changes, which were to say:

35

It is possible that Mr Caprioli was shown or provided the information contained in both Mr Morgan’s email of 19 May 2015 and the memorandum attached to it. He received an email from Mr Morgan on 20 May and a memorandum attached to it both of which set out Mr Morgan’s summary of the Turner 19 May advice email.

40

And as is apparent from the comments, Mr Salter had some changes he wanted to make to those. Do you see that?---Yes, only from what I know from your document.

He wanted to remove the second subparagraph and again add the qualification:

45

Though there is no direct evidence confirming this.

To the first subparagraph. Do you see that?---Yes.

And, again, just so I understand, this is interaction consistent with your understanding of how an independent report would be prepared?---Well, I think it
5 turns on what Mr Mavrakis is comfortable with, but I wasn't aware of this degree of interaction between Mr Salter and Mr Mavrakis on this particular point.

And are you comfortable with this, now that you know about it?---I think the key thing is that the report needed to be correct. I think Mr – Mr Salter and Mr Mavrakis
10 were looking to ensure that – that it was thorough, but at the end of the day the judgment about the independence of it I think rests with Mr Mavrakis and the board.

Well, nobody could be in any doubt, no reasonable person could be in any doubt that Mr Salter was seeking to minimise the extent to which it was said that Mr Caprioli
15 had knowledge of the legal advices. Agreed?---That's the tenor of those comments, yes.

I tender that document, Commissioner.

20 THE COMMISSIONER: Draft Clayton Utz report with annotations apparently by Salter, 5 October '17, AMP.6000.0054.6600 will be exhibit 2.59.

25 **EXHIBIT #2.59 DRAFT CLAYTON UTZ REPORT WITH ANNOTATIONS BY SALTER DATED 05/10/2017 (AMP.6000.0054.6600)**

MR HODGE: And then can we bring up AMP.6000.0054.6687. So you will see what has happened in response to those earlier emails is that Mr Mavrakis has sent
30 through a marked-up and clean version of the relevant pages. Do you see that's the email of 5 October 2017?---Yes.

And Mr Salter's response is:

35 *Thanks, Nick. I'm not sure all this extra detail helps with the proposition I want to get across that there is no evidence that Rob saw the relevant memorandum from Justin Morgan. In any event, please see the attached comments and suggested amendments.*

40 Do you see that?---Yes.

And then – I tender that document, Commissioner.

45 THE COMMISSIONER: Exhibit 2.60, emails between Salter and Mavrakis, 5 and 6 October '17, AMP.6000.0054.6687.

**EXHIBIT #2.60 EMAILS BETWEEN SALTER AND MAVRAKIS, 5 & 6
OCTOBER 2017 (AMP.6000.0054.6687)**

5 MR HODGE: Can we bring up the document that is AMP.6000.0054.6692. You
will see these are the track changes pages that had been sent through by Mr
Mavrakis, and then have had comments placed on them by Mr Salter and that was
the attachment to the last email – or this is the attachment to the last email we looked
at. So if we go to page .6694. So you will see – you can see from the tracking this is
10 all this extra detail that has been added by Clayton Utz, and you will see that what
Mr Salter asked be put in there is:

*There is no evidence to suggest that Mr Caprioli was separately sent the
15 memorandum, even though it was addressed to him.*

And you know, don't you, that that's the language that's used in the final report?---I
can't recall the words of the final report but I will accept what you say.

20 All right. We will come back to that. And then if we go over to page .6696. You
will see, again, there's a sentence had been:

*When the opening statements in both of these emails are read together it is
possible that Mr Caprioli was shown the information contained in Mr
25 Morgan's 10.42 pm email of 19 May 2015 or the substance of that information
was discussed with him.*

And Mr Salter has suggested a change which is to delete:

When the opening statements in both of these emails are read together -

30 And instead put the words at the end of the sentence:

Though there is no direct evidence on this point.

35 Do you see that?---Yes.

Now, I tender that document, Commissioner.

40 THE COMMISSIONER: Drafts sent by Salter to Mavrakis attached to exhibit 2.60,
AMP.6000.0054.6692 will be exhibit 2.61.

**EXHIBIT #2.61 DRAFTS SENT BY SALTER TO MAVRAKIS ATTACHED
TO EXHIBIT 2.60 (AMP.6000.0054.6692)**

45

MR HODGE: Now, I will ask you again: you obviously hadn't seen this document - - -?---No.

5 - - - earlier. And, again, is this consistent with your understanding of how an independent report would be prepared?---I agree there's a lot of exchanges there. Again, I – it would be up to Mr Mavrakakis to decide on the degree of independence.

10 Does it seem unusual to you to have the general counsel saying to the external solicitors for their independent report:

I am not sure all this extra detail helps with the proposition I want to get across that there is no evidence that Rob saw the relevant memorandum from Justin Morgan.

15 Does that seem unusual to you?---Well, there was clearly a dialogue on this issue going on between the general counsel and Mr Mavrakakis. I can't really account for what's exchanged between them other than what you were showing me on – on those – on those documents.

20 All right. And then those emails were 6 October. Clayton Utz think that they have sent the final version – or send the final version of the report on 6 October. Were you aware of that?---I can't recall the dates, Mr Hodge.

25 I will show you those documents. Can we bring up AMP.6000.0062.7501. So you see, this is an email from Clayton Utz to Ms Brenner says:

Dear Catherine, we refer to your letter of instructions to undertake an independent investigation. We enclose our letter and final AMP BOLR investigation report dated 6 October 2017.

30 And I tender – what I might do, Commissioner, is there's three documents I am going to bring up. I will tender them as one exhibit. The second document is AMP.6000.0062.7502. You see this is the signed letter on 6 October saying:

35 *We enclose our final report which sets out our findings arising from the investigation.*

?---Yes.

40 And then the third part of the document is AMP.6000.0062.7503, which is the actual report?---Yes.

45 So that is or thought to be by Clayton Utz the final report. I tender that, Commissioner, as an exhibit.

THE COMMISSIONER: Bundle of documents relating to final report comprising email Mavrakakis to Brenner submitting final BOLR report 6 October '17,

AMP.6000.0062.7501, letter Clayton Utz to Brenner AMP.6000.0062.7502, and report AMP.6000.0062.7503, together those are exhibit 2.62.

5 **EXHIBIT #2.62 BUNDLE OF DOCUMENTS RELATING TO FINAL
REPORT COMPRISING EMAIL MAVRAKIS TO BRENNER SUBMITTING
FINAL BOLR REPORT 6 OCTOBER 2017 (AMP.6000.0062.7501), LETTER
CLAYTON UTZ TO BRENNER (AMP.6000.0062.7502), AND REPORT
10 (AMP.6000.0062.7503)**

MR HODGE: Now, on that last document that we looked at which is .7503, can we bring up page .7557. So you will see – no, zoom out, please. You will see what paragraph 145 is there. It begins:

15

Further, Mr Guggenheimer's conduct as highlighted above at paragraph 143.

?---Yes.

20 Can we now bring up on the other side of the page AMP.6000.0038.0001 [erratum: AMP.6000.0010.0440]. Sorry, it's tab 3 to Mr Regan's statement. Page 55 again. So you see this change, which is the paragraph numbering next to the paragraph:

25 *Further, Mr Guggenheimer's conduct as highlighted –*

That paragraph number has disappeared and there's now a new paragraph 145 which says:

30 *For completeness, Mr Craig Meller, CEO, confirmed to us that he was not aware of the 90 day exception and ring fencing and that he did not receive nor was he aware of any of the legal advices referred to above, either before or after the 2015 breach report. This is supported by our investigation and we come to the same conclusion.*

35

?---Yes.

Do you see that? Were you aware that an earlier final report had been submitted that did not contain that paragraph?---Yes.

40

And are you aware of how it is – I'm sorry, were you aware at the time?---At the time?

45 At the time, when this – when the reports were finalised in October 2017, were you aware?---Of? Sorry, I am missing the question.

The fact that there was a final version of the report that was submitted that did not contain this paragraph?---Yes.

All right?---That was the version I got initially.

5

I see. And are you aware of how it is that that paragraph came to be included?---Not entirely. Other than to say that at the board meeting and the board pack of – I think it's 16 October, there were a number of changes, as I recall, that were submitted as part of the version that the board finally approved.

10

And can we – well, I'm sorry, are you saying the board met and approved changes to the report?---I believe there was a paper submitted to the board on 16 October. I think that's the correct date – where they approved a final round of changes, which I believe includes that paragraph. But there were, if memory serves me, I believe there were other changes as well.

15

Why would the board be approving changes to an independent report?---Because it was a report being accepted by the board.

20

All right. Can we bring up AMP.6000.0054.6720. So this is an email sent by Mr Salter to Mr Mavrakis on 11 October 2017 after receipt of the apparently final report, and you will see Ms Brenner has made a number of comments that she would like to see incorporated into the report to be handed to ASIC on Monday and the second point is:

25

Include a statement to the effect that Craig Meller was unaware of the practices or their illegality.

Do you see that?---Yes.

30

Were you aware that Ms Brenner had asked Mr Salter to make a request to Clayton Utz to change the final version of their independent report?---I don't believe so.

You weren't aware of that?---I don't believe so, no.

35

Is that behaviour consistent with your understanding of how an independent report would be prepared?---Well, again, I think it's a matter for Mr Mavrakis and the board to settle.

40

I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 2.63, email Salter to Mavrakis, 11 October '17, AMP.6000.0054.6720.

45

**EXHIBIT #2.63 EMAIL SALTER TO MAVRAKIS DATED 11/10/2017
(AMP.6000.0054.6720)**

MR HODGE: And then can we bring up AMP.6000.0054.6765. You will see this is an email from Ms Brenner to Mr Salter and copied to Mr Meller. It asks for draft script talking points for the meeting with ASIC, and it says:

5 *Has Clayton Utz now included in their report that we will give to ASIC their findings on Craig?*

?---Yes.

10 Do you know why you weren't copied to that email?---No.

Does it seem unusual to you, given that you were, according to the instructions, one of the two people to have day-to-day dealings with Clayton Utz?---The report was substantially settled by the board and the general counsel and Clayton Utz in the
15 weeks leading up to that final report.

Right. And you will see there, Mr Salter forwards that request on to Mr Mavrakis?---Yes.

20 All right. I tender that document, Commissioner.

THE COMMISSIONER: Emails between Brenner, Salter, Mavrakis, 15 October '17, AMP.6000.0054.6765 will be exhibit 2.64.

25

EXHIBIT #2.64 EMAILS BETWEEN BRENNER, SALTER, MAVRAKIS DATED 15/10/2017 (AMP.6000.0054.6765)

30 MR HODGE: Can we bring up AMP.6000.0054.6503. So at this stage – this is an email sent about a week before the emails we're now looking at. Mr Salter sends an email to Mr Medcraft and Mr Kell. You weren't copied to that email, but were you aware of it being sent?---I couldn't recall, Mr Hodge.

35 Okay?---I don't believe so.

But what he said is:

40 *You will recall that Catherine and I mentioned to you earlier in the year that the AMP Limited board had instructed Clayton Utz to undertake an independent investigation of (in brief) the circumstances behind the continued charging of ongoing service fees to certain of our advice customers while they were in what is known as our Buyer of Last Resort or BOLR pool.*

45 Obviously you can see that there now?---Yes.

And that message, which is “we’ve retained or instructed Clayton Utz to conduct an independent report”, that’s consistent with what you recall being said at the later meeting to ASIC on 17 October?---Yes.

5 I tender that document, Commissioner.

THE COMMISSIONER: Email Salter to Medcraft, Brenner and others, 4 October ’17, AMP.6000.0054.6503, exhibit 2.65.

10

EXHIBIT #2.65 EMAIL SALTER TO MEDCRAFT, BRENNER AND OTHERS DATED 04/10/2017 (AMP.6000.0054.6503)

15 MR HODGE: Can we bring up AMP.6000.0054.6587. All right. Let’s try AMP.6000.0054.6711. We can skip over that. Can we go to AMP.6000.0054.6720. We’ve looked at that already. AMP.6000.0062.7767.

THE COMMISSIONER: Recipe as before, I think.

20

MR HODGE: Yes. Can we bring up – I just want to get the numbers right, Commissioner, rather than as now being suggested by Mr Crutchfield, just guessing.

THE COMMISSIONER: As previously said, I won’t call bingo.

25

MR HODGE: Sorry, Commissioner, I will just need one moment. All right. Can we bring up AMP.6000.0052.1590. So you see what Mr Mavrakis sent back, as this discussion goes on about Mr Meller, is:

30

On including Craig in the report, we had previously removed his reference in the interview list to interviewing him on the basis that it would attract unnecessary attention to him by ASIC, given that we found he was not aware of the 90 day exception or ring fencing and he was not involved in the communications with ASIC after the breach report. We instead included it in the summary of the legal advice.

35

Do you see that there, Mr Regan?---Yes.

40 Now, as I understand it, that doesn’t quite reflect your recollection. You didn’t realise that his name was being excised so as to avoid attention from ASIC?---There was a discussion regarding the sensitivity of the name during that meeting that I referred to.

45 Is this the telephone conference?---Yes. That was part of the consideration.

But part of the – go on?---That’s not my recollection, though, of why it was being taken out. So I have a different recollection.

All right. I tender that document, Commissioner.

THE COMMISSIONER: Email Mavrakis to Salter, 15 October '17, AMP.6000.0052.1590, exhibit 2.66.

5

**EXHIBIT #2.66 EMAIL MAVRAKIS TO SALTER DATED 15/10/2017
(AMP.6000.0052.1590)**

10

MR HODGE: I should indicate, Commissioner, I expect in due course there will be the standard non-publication direction made with respect to that email to redact the actual email addresses.

15

THE COMMISSIONER: Yes. The personal contact details, the email addresses in particular, will be redacted. I am sure the press have no great interest in publishing those, but can I just indicate that there will be a non-publication direction about those things.

20

MR HODGE: And then can we bring up AMP.6000.0062.8488. So you will see there's then an email sent back by Mr Mavrakis to Mr Salter later that afternoon which says he proposes:

...to add an additional subparagraph 92(j) as set out below.

25

And at that stage, Mr Mavrakis' proposed wording is:

For completeness, Mr Craig Meller, CEO, confirmed to us that he was not aware of the 90 day exception and ring fencing, and that he did not receive any of the legal advices referred to above either before or after the 2015 breach report. This was supported by our documentary review.

30

Do you see that there?---Yes.

35

Now, do you know that's not the words that appear in the final report? Would you like to see that again. Let's bring up tab 3 to Mr Regan's statement and go to paragraph 145. It's page 55. See, rather than it stopping at:

This was supported by our documentary review -

40

It's made even stronger:

This is supported by our investigation and we come to the same conclusion.

45

?---Yes.

And do you know how that change happened?---No.

Can I show you AMP.6000.0054.6768. So you will see Mr Salter responded to that earlier email and Mr Mavrakis and said:

I am not sure this is the right section.

5

Of course, Mr Mavrakis had suggested 92(j). And Mr Salter says:

I suggest you combine 144 and 145 into a single paragraph and add a new 145. I've made some changes below.

10

And if we look down in the text of the email, we see that Mr Salter has now revised the words so that Clayton Utz's conclusion is to be:

This is supported by our investigation and we come to the same conclusion.

15

Can we put that up on one side of the page and on the other side of the page bring up the Clayton Utz report, tab 3 to Mr Regan's statement. And you see then it's Mr Salter's words that go in as paragraph 145 of the Clayton Utz report?---Yes.

20 I tender that email - - -

THE COMMISSIONER: Just before you leave that, you say they're Mr Salter's words. Why do I conclude that from the document on the left?

25 MR HODGE: You will see, Commissioner, on the left he says:

I suggest you combine 144 and 145 into a single paragraph 144 and add a new 145. I've made some changes below -

30 and in the way of the forwarding of emails, he has changed the text of the email in - that is subparagraph (j), and we can also, if it's helpful, I can bring up the preceding document where we can see that.

35 THE COMMISSIONER: Emails between Mavrakis and Salter, 15 October '17, AMP.6000.0054.6768, and the earlier one too, Mr Hodge?

MR HODGE: Yes, I'm sorry, Commissioner.

40 THE COMMISSIONER: AMP.6000.0062.8488 together become exhibit 2.67.

EXHIBIT #2.67 EMAILS BETWEEN MAVRAKIS AND SALTER DATED 15/10/2017 (AMP.6000.0054.6768 AND AMP.6000.0062.8488)

45

MR HODGE: Thank you, Commissioner. Now, having seen these emails, Mr Regan, is this consistent with how you would understand or how you understand an

independent report should be prepared?---Again, I think it's Mr Mavrakis' decision in relation to that, along with the board.

5 I'm not sure I quite understand that proposition. Why is it the decision of the board as to what goes into an independent report?---From what I can see and from what I can understand from the documents, that's the way the report was settled.

10 But you understand the board gets to settle the report?---Well, Mr Mavrakis is having to agree with that, of course.

And do you maintain here today that you still regard this as an independent report?---Well, so far as Mr Mavrakis is declaring it to be his independent report, yes.

15 I see. And - - -?---I don't think it's for me to determine the independence of the report.

20 And do you feel any discomfort at having met with ASIC and said to them, "This is an independent report", in light of what you've now seen?---There is a level of discomfort, yes.

25 And that's because, from your perspective, looking at it, the report appears far less than independent of the company. Do you agree?---There is a significant amount of interchange between the company and Mr Mavrakis in relation to the - the report.

And a significant interchange between the most senior people within AMP and Mr Mavrakis?---That's correct.

30 Where, can I suggest, objectively, Mr Mavrakis could not have been in any doubt whatsoever as to the outcomes that were desired by those most senior people in the report?---That's up to Mr Mavrakis to determine.

35 And are you aware of the conclusions of the report having been relied upon by Mr Salter in communications with ASIC?---I am not sure I can speak of the communications between Mr Salter and ASIC.

All right. Commissioner, I don't have any further questions.

40 THE COMMISSIONER: Yes.

MR HODGE: - - - for this witness.

45 THE COMMISSIONER: Does any party other than AMP seek leave to cross-examine Mr Regan? No? Mr Crutchfield?

MR CRUTCHFIELD: Just a couple of short questions, if the Commissioner pleases.

MR CRUTCHFIELD: Mr Regan, yesterday you were asked some questions about –
5 and Commissioner this is at transcript 1076, line 10. You were asked:

*All right. So are you acknowledging – is AMP acknowledging that it has failed
to act honestly, fairly and efficiently in relation to the charging of fees for no
service.*

10 And you said:

Yes we have.

15 You then were asked:

*Sorry, when you say yes we have are you ever aware of ever having done it
before now at this very moment when you've done it.*

20 And you answered:

Yes, I'm uncertain.

Do you recall saying that, Mr Regan?---Yes.

25 Could I ask Mr Regan to be provided with, please, tab 24 of Mr Regan's exhibits.

THE COMMISSIONER: He has those in the box. Yes.

30 MR CRUTCHFIELD: Do you have - - -

THE COMMISSIONER: You have the exhibits in the box, don't you, tab 24 to
your statement?---Yes, I do, Commissioner.

35 MR CRUTCHFIELD: Could you go to that, please, tab 24?---I have that tab.

You have that? That's a breach notice that AMP gave to ASIC on 27 May 2015. Is
that correct?---Yes.

40 If you go to page 3, and under the heading Legislation Breached?---Yes.

Do you see – yes, someone – thank you for helpfully putting it up on the screen so
we can see it. You see AMP Life Limited, and its subsidiary NMLA as
administrators, admitted to a breach of section 912A(1)(a) of the Corporations Act.

45 Do you see that in the second paragraph?---On the screen, Mr Crutchfield?

On the screen, yes?---Yes.

And you see the first paragraph by the advice licensee, section 12DI (3) and by ASL and NM Super section 912A(1)(a) of the Corporations Act and a provision of the SIS legislation and then separately NMMT of section 912A(1)(a) of the Corporations Act. Do you see that?---Yes.

5

Does that refresh your memory about AMP having previously acknowledged that it had contravened amongst other things section 912A(1)(a) of the Corporations Act?---Yes.

10 If you go, please, to a few tabs on, tab 29. That should be another breach notice that AMP Financial Planning Proprietary Limited gave to ASIC on 5 December 2016?---Yes.

And you see in the first paragraph:

15

We set out below information regarding a breach of section 912A(1)(a) of the Corporations Act

?---Mmm.

20

And a provision of the ASIC Act as well. If we go forward to the next tab – sorry, one more tab, tab 31, Mr Regan?---Yes.

25 Again, a similar acknowledgement by AMP in the first paragraph of the letter to ASIC of 3 May 2017?---Yes.

Do you see that?---Yes.

30 And finally, tab 32, a similar acknowledgement in the breach notice given to ASIC on 8 June 2017. Do you see that?---Sorry - - -

That's – I'm sorry, I'm going too quickly probably?---That's okay.

Tab 32?---Yes.

35

That – does that – these notices refresh your memory about AMP having previously acknowledged that it had contravened relevant provisions of the Corporations Act and the ASIC Act in relation to the 90 day exception - - -?---Yes.

40 - - - and other matters we've been talking about. Now, separately, can I ask you – you were asked a lot of questions about the Clayton Utz report. Do you recall after the board received the Clayton Utz report, that the board constituted a board committee to work with a subcommittee of the general leadership team to oversee and implement a program of work to address the issues arising from the Clayton Utz
45 report?---Yes, the Group Leadership Team.

Yes, group leader – thank you. Now, that – was that program of works supervised by anybody?---Are you referring to the fact that we've appointed an external independent to be involved in that work?

5 You have done that, have you?---Yes, we have.

And who is that?---Mr Alan Cameron.

And are you able to tell his Honour what other work - - -

10

THE COMMISSIONER: Well, Mr Crutchfield - - -

MR CRUTCHFIELD: I apologise.

15 THE COMMISSIONER: - - - no more.

MR CRUTCHFIELD: Tell the Commissioner what other work is ongoing after the board subcommittee received the Clayton Utz report? What else has AMP done in response to that report?---With permission, as far as the program of work is concerned, that's the advice business review program that I alluded to earlier.

20

Yes?---In summary, we've compiled approximately 18 independent reviews from relevant experts to assist us in ensuring that we've got a fit for purpose business going forward.

25

Okay. Thank you. Now, moving to another topic, Mr Hodge took you to many communications with ASIC where AMP described the administrative error that had led to charging fees for no service. Do you recall - - -?---Yes.

30

- - - that? Can you tell the Commissioner whether or not an administrative error or administrative errors were the cause of some of those cases where fees were charged for no service?---I understand that to be the case.

35

Have you got your statement there, Mr Regan? Could you go to paragraph 170. Do you have that there, Mr Regan?---Yes, I do.

Now, are you able to say how many instances of the 90 day exception there were?---I understand there were 39.

40

Out of how many BOLR transactions?---2417.

Are you able to say roughly what proportion of customers were charged fees as a result of the 90 day exception?---13 per cent, I believe.

45

And as a result of ringfencing, are you able to say?---No. I just can't bring that number to mind at the moment, but it's a much reduced number. I think as a

percentage – I think there’s about 1000 or 1500 customers that were affected by the ringfencing practice.

5 Do you have – could you go to paragraph 335 of your statement which is page 61?---Yes.

Now, that figure in 335(a), just read that to yourself:

10 *The failure of AMP advice licensees to terminate OSFs in the context of relevant buy-back arrangements, to date approximately 14,095 customers have been identified.*

?---Yes.

15 Now, are you saying that figure – you think that figure is correct or not correct?

THE COMMISSIONER: Well, you’re inviting your witness, are you, Mr Crutchfield, to go back on his adoption of his statement earlier? Is that what you’re inviting him to do because if you are, you need to tell him that that’s exactly what
20 you’re having him do. He has pledged his oath to this. Do you want him to go back on it now, do you?

MR CRUTCHFIELD: Well, Commissioner, in light of the witness’s previous answer and the corrections that he made to this section yesterday, I just want to make
25 sure that you, Commissioner, have the evidence.

THE COMMISSIONER: A matter for you, Mr Crutchfield. I have raised it with you. A witness for whom I think AMP has primary responsibility. Yes, go on.

30 MR CRUTCHFIELD: Mr Regan?---So could you just help me out, Mr Crutchfield?

Yes, look at 335(a)?---(a), yes.

35 Do you think the figure in (a) is correct, number of customers?---The 14,095?

Yes?---Without having the other document in front of me it’s just a little difficult to tell but I think that’s the correct number.

40 Okay. Now, you were asked some questions about the Clayton Utz report and you were taken to emails where Clayton Utz have referred to a summary of the legal advice as opposed to the Clayton Utz report itself. Are you aware of the distinction between those two documents?---The summary – these are the two documents prepared by Clayton Utz?

45 Yes. What were those two documents?---There was the Clayton Utz report and then there was a separate confidential or privileged advice in relation to the implications of the findings.

Yes. All right. Thank you. Thank you, Mr Regan. If the Commissioner pleases.

THE COMMISSIONER: Is there anything arising out of that, Mr Hodge?

5 MR HODGE: No, Commissioner.

THE COMMISSIONER: Thank you, Mr Regan. You may leave the witness box?---Thank you, Commissioner.

10

<THE WITNESS WITHDREW

[4.18 pm]

15 THE COMMISSIONER: In view of the evidence given by Mr Regan, there may be some question about what conclusions, if any, I may reach about the extent to which senior management or others associated with AMP sought to influence or did influence content of the report by Clayton Utz apparently submitted to ASIC as an independent report. It is a matter for AMP and its advisers whether it seeks to have some opportunity to provide any material which goes beyond the evidence given by
20 Mr Regan about that matter, the documents that were tendered in relation to it. Very well.

MR HODGE: Commissioner, I note the time. Before we – could I just correct one matter from yesterday before we rise?

25

THE COMMISSIONER: Yes.

MR HODGE: Yesterday there was a statement tendered by us as Counsel Assisting provided by Mr Bradley Green who is the director of advice and research at AMP.
30 And in summarising that statement, we referred to a spreadsheet setting out the proportion of in-house products on the approved product lists of AMPs licensees, and the proportion of funds of new customers invested in those products. We said yesterday that AMP had not provided the spreadsheet until after 9.30 pm on Sunday night. In fact, AMP had first provided a copy of the spreadsheet to the Commission
35 by email after 5 pm on Wednesday 11 April, and provided a further copy of the spreadsheet after 9.30 pm on Sunday night.

We have now reviewed the further copy of the spreadsheet. It contains information about four of AMPs licensees: AMP Financial Planning, Charter, Hillross and ipac.
40 We won't summarise the position for all four licensees, however, in relation to the largest licensee, AMP Financial Planning, it shows that in each year since 2013, between 35 and 40 per cent of the investment options on the approved product list were in-house products, more than 90 per cent of new customers invested funds in or paid insurance premiums in respect of one or more of AMPs in-house products, and
45 the proportion of funds invested in or insurance premiums paid in respect of AMPs in-house products as opposed to external products by new customers was more than 70 per cent.

In summarising the statement of Mr Green yesterday, we also referred to five particular incidents of prohibited conflicted remuneration that were disclosed in Mr Green's statement and we had selected those five incidents as examples of 13 incidents of prohibited conflicted remuneration disclosed in Mr Green's statement.

5 We said that AMP had not disclosed any of the five incidents in its submissions to the Commission earlier this year. AMP has drawn our attention to one part of its schedule containing further details of misconduct or possibly misconduct still under investigation which AMP provided to the Commission in February of this year to supplement the matters that it had already disclosed, and AMP included two entries

10 in that table which they believe disclosed, in general terms, three of the five incidents that we referred to.

In both entries in the schedule AMP identified that there had been issues relating to the possible failure of licensees to take reasonable steps to ensure that representatives

15 did not accept conflicted remuneration. Both entries stated that these issues related to circumstances where practices had been provided with the offer of a waiver of para-planning costs and that the issue had been identified in July 2015. No reference was made in either entry to the number of customers affected or the quantum of prohibited conflicted remuneration provided. AMP therefore did disclose in general

20 terms three of the five examples of the 13 incidents of prohibited conflicted remuneration identified in the statement of Mr Green.

THE COMMISSIONER: Thank you for making that correction.

25 MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Yes. 9.45 tomorrow, I think, don't you, Mr Hodge? Or is there a point starting now?

30 MR HODGE: I am happy to start at 9.45 tomorrow, Commissioner.

THE COMMISSIONER: 9.45 tomorrow, 9.45 it is.

35 **MATTER ADJOURNED at 4.23 pm UNTIL WEDNESDAY, 18 APRIL 2018**

Index of Witness Events

| | |
|---|--------|
| ANTHONY GEORGE REGAN, ON FORMER AFFIRMATION | P-1103 |
| CROSS-EXAMINATION BY MR HODGE | P-1103 |
| RE-EXAMINATION BY MR CRUTCHFIELD | P-1197 |
| THE WITNESS WITHDREW | P-1201 |

Index of Exhibits and MFIs

| | |
|--|--------|
| EXHIBIT #2.24 PWC AMP FINANCIAL ADVICE REVIEW DATED 30/03/2015 (AMP.6000.0003.8310) | P-1108 |
| EXHIBIT #2.25 LETTER AMP TO ASIC DATED 23/06/2015 (AMP.1000.0001.0921) | P-1109 |
| EXHIBIT #2.26 EMAILS BETWEEN MORGAN, GUGGENHEIMER AND OTHERS DATED 12/06/2015 (PMA.001.005.4909) | P-1113 |
| EXHIBIT #2.27 LETTER AMP TO ASIC DATED 26/11/2015 (AMP.1000.0001.4844) | P-1118 |
| EXHIBIT #2.28 LETTER AMP TO ASIC DATED 14/12/2015 (AMP.1000.0001.4781) | P-1120 |
| EXHIBIT #2.29 EMAILS BETWEEN MARSH, COLLINS AND OTHERS DATED 11/11/2016 (AMP.1000.0001.5093) | P-1123 |
| EXHIBIT #2.30 EMAILS BAKER COOK TO MAVRAKIS AND OTHERS DATED 21/06/2017 (AMP.6000.0061.4329) | P-1124 |
| EXHIBIT #2.31 PRACTICE PROPOSITIONS PROJECT STEERING COMMITTEE PACK DATED 24/05/2013 (AMP.6000.0011.7910) | P-1132 |
| EXHIBIT #2.32 FOFA PRACTICE PROPOSITION STREAM ORPHAN CONTRACTS DOCUMENT VERSION 1.2 DATED 21/05/2013 (ASIC.0019.001.0075) | P-1134 |
| EXHIBIT #2.33 EMAILS RAKICH TO PARRA AND OTHERS DATED 14/06/2013 (ASIC.0019.0001.0003) | P-1141 |
| EXHIBIT #2.34 DECISION LOG SPREADSHEET RE MEETING 24 MAY 2013 (ASIC.0019.0001.0005) | P-1142 |
| EXHIBIT #2.35 EMAILS BETWEEN BYRNE AND MARSH AND OTHERS DATED 30/08/2013 (AMP.0001.0025.0913) | P-1148 |

| | |
|--|--------|
| EXHIBIT #2.36 POWERPOINT PRESENTATION CLIENT TRANSFER POLICIES AND PROCESSES (AMP.0001.0025.0917) | P-1148 |
| EXHIBIT #2.37 FEE REMEDIATION OUTBOUND CALL SCRIPT, JANUARY 2016 (AMP.6000.0051.2415) | P-1156 |
| EXHIBIT #2.38 AGENDA, ADVICE CULTURE AND COMPLIANCE BOARD COMMITTEE DATED 15/12/2017 (AMP.6000.0019.8019) | P-1163 |
| EXHIBIT #2.39 MEETING PACK ADVICE CULTURE AND COMPLIANCE BOARD COMMITTEE DATED 23/01/2018 (AMP.6000.0019.8252) | P-1164 |
| EXHIBIT #2.40 MEETING PACK ADVICE CULTURE AND COMPLIANCE BOARD COMMITTEE DATED 16/02/2018 (AMP.6000.0019.8480) | P-1166 |
| EXHIBIT #2.41 GROUP RISK AND COMPLIANCE COMMITTEE MEETING PACK, MEETING 4 OF 2015 (AMP.6000.0051.1982) | P-1167 |
| EXHIBIT #2.42 GROUP RISK AND COMPLIANCE COMMITTEE MEETING PAPERS DATED 14/11/2016 (AMP.6000.0007.4466) | P-1168 |
| EXHIBIT #2.43 EMAILS BETWEEN BAKER COOK AND ZHANG DATED 17/10/2017 (ASIC.0018.0001.3383) | P-1173 |
| EXHIBIT #2.44 NOTICE TO PRODUCE AMP LIMITED NP160 (RCD.0002.0001.1170) | P-1174 |
| EXHIBIT #2.45 SPREADSHEET EXTRACT RECORDING PRODUCTION IN RESPONSE TO NOTICES TO PRODUCE (RCD.9999.0013.0001) | P-1175 |
| EXHIBIT #2.46 NOTICE TO PRODUCE TO AMP LIMITED, NP216 (RCD.0002.0001.1314) | P-1175 |
| EXHIBIT #2.47 FOUR SPREADSHEETS RECORDING TRANCHES 1 TO 4 OF PRODUCTION BY AMP LIMITED IN RESPONSE TO NOTICE TO PRODUCE NP216 (RCD.9999.0012.0001, RCD.9999.0012.0002, RCD.9999.0012.0003, RCD.9999.0012.0004) | P-1176 |
| EXHIBIT #2.48 EMAILS BETWEEN SALTER AND MAVRAKIS DATED 18/09/2017 (AMP.6000.0054.6198) | P-1177 |
| EXHIBIT #2.49 EMAILS BETWEEN MAVRAKIS AND SALTER DATED 19/09/2017 (AMP.6000.0054.6294) | P-1179 |

| | |
|---|--------|
| EXHIBIT #2.50 EMAIL MAVRAKIS TO SALTER DATED 24/09/2017 (AMP.6000.0054.6318) | P-1179 |
| EXHIBIT #2.51 EMAIL SALTER TO BAKER COOK DATED 21/09/2017 (AMP.6000.0054.6312) | P-1179 |
| EXHIBIT #2.52 DRAFT CLAYTON UTZ REPORT MARK UP DATED 24/09/2017 (AMP.6000.0052.0924) | P-1181 |
| EXHIBIT #2.53 EMAILS BETWEEN SALTER, MELLER, REGAN AND MAVRAKIS DATED 24.09.2017 (AMP.6000.0054.6392) | P-1181 |
| EXHIBIT #2.54 EMAILS BETWEEN MAVRAKIS AND BRENNER DATED 25/09/2017 (AMP.6000.0054.6489) | P-1182 |
| EXHIBIT #2.55 EMAILS BETWEEN MAVRAKIS AND SALTER DATED 04/10/2017 (AMP.6000.0054.6500) | P-1182 |
| EXHIBIT #2.56 EMAILS BETWEEN SALTER AND MAVRAKIS DATED 04/10/2017 (AMP.6000.0054.6508) | P-1184 |
| EXHIBIT #2.57 DRAFT CLAYTON UTZ REPORT WITH ANNOTATIONS BY SALTER (AMP.6000.0054.6510) | P-1185 |
| EXHIBIT #2.58 EMAILS BETWEEN SALTER AND MAVRAKIS DATED 05/10/2017 (AMP.6000.0054.6596) | P-1186 |
| EXHIBIT #2.59 DRAFT CLAYTON UTZ REPORT WITH ANNOTATIONS BY SALTER DATED 05/10/2017 (AMP.6000.0054.6600) | P-1187 |
| EXHIBIT #2.60 EMAILS BETWEEN SALTER AND MAVRAKIS, 5 & 6 OCTOBER 2017 (AMP.6000.0054.6687) | P-1188 |
| EXHIBIT #2.61 DRAFTS SENT BY SALTER TO MAVRAKIS ATTACHED TO EXHIBIT 2.60 (AMP.6000.0054.6692) | P-1188 |
| EXHIBIT #2.62 BUNDLE OF DOCUMENTS RELATING TO FINAL REPORT COMPRISING EMAIL MAVRAKIS TO BRENNER SUBMITTING FINAL BOLR REPORT 6 OCTOBER 2017 (AMP.6000.0062.7501), LETTER CLAYTON UTZ TO BRENNER (AMP.6000.0062.7502), AND REPORT (AMP.6000.0062.7503) | P-1190 |
| EXHIBIT #2.63 EMAIL SALTER TO MAVRAKIS DATED 11/10/2017 (AMP.6000.0054.6720) | P-1191 |

| | |
|---|--------|
| EXHIBIT #2.64 EMAILS BETWEEN BRENNER, SALTER, MAVRAKIS DATED 15/10/2017 (AMP.6000.0054.6765) | P-1192 |
| EXHIBIT #2.65 EMAIL SALTER TO MEDCRAFT, BRENNER AND OTHERS DATED 04/10/2017 (AMP.6000.0054.6503) | P-1193 |
| EXHIBIT #2.66 EMAIL MAVRAKIS TO SALTER DATED 15/10/2017 (AMP.6000.0052.1590) | P-1194 |
| EXHIBIT #2.67 EMAILS BETWEEN MAVRAKIS AND SALTER DATED 15/10/2017 (AMP.6000.0054.6768 AND AMP.6000.0062.8488) | P-1195 |