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TRANSCRIPT OF PROCEEDINGS

O/N H-919886

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

9.30 AM, MONDAY, 17 SEPTEMBER 2018

Continued from 14.9.18

DAY 55

MS R. ORR QC appears with MR M. COSTELLO as Counsel Assisting with MR M. HOSKING and MS S. ZELEZNIKOW

MR J. STOLJAR SC appears with MR T.W. MARSKELL for REST

MR R. HOLLO SC appears for AMP

MR J. LOCKHART SC appears with MR G. MEHIGAN and MR T. WARNER for Allianz

<CROSS-EXAMINATION BY MR COSTELLO

5

THE COMMISSIONER: Yes, Mr Costello.

10 MR COSTELLO: Continuing with Mr Ross, Commissioner. Mr Ross, you will recall on Friday we were discussing the case of a REST member who was rendered paraplegic after a fall?---I recall, yes.

15 And I took you to the employee's claim form which listed Swan Services as her employer?---Yes.

20 And I took you to a document that showed that RESTs group life insurer, AIA, had accepted the claim at one point in time, at least, and that RESTs administrator, AAS, suggested the insurer should, perhaps, review that decision because of the operation of a prescribed minimum balance clause in operation with another definition relating to when she had ceased working?---Yes.

And central to the administrator's reasoning was the date the member had ceased working at McDonald's?---Yes.

25 Do you accept that in circumstances where REST had information that indicated that McDonald's was not the member's last employer, that it or AAS should have conducted further investigations before sending correspondence to the insurer suggesting the claim might be denied?---From my understanding, the SS had already conducted quite thorough investigations into whether they could get any information
30 from Swan Services, and I believe the insurer had also requested information about Swan Services prior to the claim being accepted.

35 Do you think that the member was entitled to be contacted and asked for further information before that type of communication was sent to the insurer?---Sorry, when you say information sent to the insurer, what point are you referring to?

40 I'm referring to the email from AAS where it suggested the insurer might change its decision?---I believe the member had been contacted on multiple occasions prior to that, requesting information on Swan Services.

Do you accept that in the circumstances of this case, REST failed to do everything that was reasonable to pursue this member's claim?---Absolutely not.

45 Do you think that in circumstances where the member's claim identified a serious mental health condition, that manifested some years before her physical injury, REST ought to have sought to better understand that condition and whether it was

relevant to a TPD claim?---I think it's a complicated question. Or sorry, it may be a complicated answer. I think REST did do everything that it should have done. I think a couple of aspects were the member's age. She was very young. It is rare for someone in their mid-20s to be so disabled that they are unlikely to ever work again.
5 Another more unusual circumstance in this case, it is very unusual for someone to be so disabled they are unlikely to ever work again and then to in fact work again, which was what happened here. So lots of inquiries were made about the member's medical history and a decision was made on the evidence that the insurer and REST had, subsequent to that other evidence was provided, but I think at that point in time,
10 in 2015, it was absolutely the correct decision to decline the claim.

Was it acceptable that the member had to commence proceedings in the New South Wales Supreme Court in order to have her claim properly determined?---The member did not have to commence proceedings in the Supreme Court to have her
15 claim properly determined. She chose to.

Well, what was the outcome of that proceeding?---The claim was admitted – well, the claim was settled, but the reason it was settled was because evidence was provided that had not been provided prior to the insurer or to REST.
20

Did REST contribute to that settlement?---No.

It was paid by the insurer?---Yes.

25 Reflecting on RESTs conduct as a whole, including the fact that a Supreme Court proceeding was commenced and settled and the effect of the settlement was that the member's claim was paid out, in fact paid out for an amount higher than the total recoverable under the insurance policy?---I believe it included costs and some other expenses, yes.
30

Reflecting on all of that, do you think that at any point REST failed to act in the best interests of this member?---With hindsight, I wish we had done more, but at every point in time when REST reviewed it, I think the correct decisions were made, but in any case like this, you know, looking back, with the benefit of hindsight, I wish we
35 could have got the benefit to the member sooner because REST is only interested in providing benefits to members who are entitled to them.

Part of the problem in all of this was record keeping. Do you agree with that?---There were some mistakes made which were preventable due to record
40 keeping, yes.

And does that – did that, in part, result from REST having a manual system that required forms to be completed by hand and submitted to REST at that – by employers at that point in time?---The mistake in this case, the error in this case, I
45 don't think was on the part of the employer or the information that was provided. It was when that information arrived to REST. There was human error in the data entry.

Right. Is it the case that employers in updating REST as to whether or not employees are continuing to work for them have to manually submit – complete and submit forms to REST?---So when we get – as – as we’ve talked about, that’s no longer the case, that it’s the – the insurance hinges upon that or not. At that point in
5 time there were multiple ways employers could provide information to us that would have ranged from automatic data being provided to us through SuperStream, to very small employers who may well have sent us a cheque and written information on the back of it but the majority of information, especially from large employers, would have come through a data file at the time.

10 So was the information that you had received from McDonald’s received in a timely way but just not input into RESTs system in a correct way?---The information we received from McDonald’s was gained when we contacted them, specifically about this member when they claimed. It was provided by McDonald’s in a timely way. It
15 was not input when it was received in a timely way.

But it wasn’t provided by McDonald’s in a timely way compared to when she ceased working for them?---This is correct. We only became aware when we made inquiries when the member claimed.

20 At the time the member claimed, RESTs records were no longer correct because they had not been updated by the employer or by the member?---This is correct, yes.

Thank you. I just want to close off on TPD claims with some more general
25 questions, not relevant to the particular member that we’ve been speaking about. Would you agree that TPD clauses in group life policies can be quite complex?---I think they are probably the most complex of insurance offered in group life, because the test that needs to be considered is a complicated test as to whether someone is capable of working ever again.

30 Yes. I might just take you to exhibit 3 to your witness statement, 6-41. The document ID for that exhibit is RST.0006.0001.0658. This is the current group life policy that I’ve taken you to before?---Yes.

35 And if we could please go to 0679. There’s a definition there, a bit above the middle of the page of gainful employment?---Yes.

It means:

40 *Being employed for gain or reward in any business, trade, profession or employment for at least 10 hours per week.*

?---Yes.

45 And that’s a clause of relevance to the TPD definition which I will now take you to. That’s on page 0681. You can see there the heading Total and Permanent

Disablement/Totally and Permanently Disabled. And in the box there's an explanation of the way the clause works. Relevantly, if the member:

5 *Has been in gainful employment at any time during the 13 months prior to the incident –*

There are three parts of the definition of TPD that might potentially be engaged?---That is correct.

10 If the member:

Has not been in gainful employment at any time for the 13 months prior –

15 Then only parts 2 and parts 3 will be engaged?---That is correct, yes.

And it's the same, only part 2 or 3 will be engaged if a person has not returned to work, for example, having been on paternity leave?---Yes.

20 All right. Then if that box could come down, please. We can then see underneath part 1 and part 2 and part 3 is on the other page. Part 1 is the easiest part of the clause to satisfy?---I – I think I understand what you're saying. Clauses part 2 and 3 are actually the easiest to satisfy. Part 1 is the most commonly tested. I say that because there is less judgment and assessment required for parts 2 and 3.

25 You're right that 2 and 3 are – well, at least 2 is more objectively ascertainable?---Yes.

30 And 3, perhaps as well, although there might be some room for debate in 3?---Yes. Yes.

And part 1 is something that requires an expert judgment?---It requires an assessment more so than 2 or 3, yes.

35 Yes. But it might be that one could satisfy part 1 with – without having an injury of the severity that would be necessary to engage part 2 or part 3?---Yes.

40 Thank you. And if we look then to part 1 – this is the part that applies if somebody is in gainful employment, there's a succession of requirements. The first is that the member has been absent from employment for three consecutive months because of the sickness or injury?---Yes.

And then:

45 *...is so disabled at the start of those three months and continuously since that time that the insured member is unlikely to ever engage in any reasonably suitable occupation.*

?---Yes.

So that's the test for somebody who is in gainful employment within the meaning of this clause at the time they were injured?---Yes.

5

In effect, it is that they couldn't, having been unwell for three months and unable to work, they're unable to return to their chosen profession or something close to it?---Yes. Unable to return to work essentially ever, given their education they have had, any training they've received, and their general experience.

10

Yes. Thank you. If we could then move to part 2. Somebody who hasn't been in gainful employment will need to meet part 2 or part 3?---Yes.

It's either of part 2 or part 3?---That is correct, yes.

15

So for part 2 – this is the one that you and I agreed was objectively ascertainable. A person will only be entitled to a TPD payment if they've lost the use of two hands, two feet, one hand and one foot, the sight in both eyes, one hand and the sight in one eye or one foot and the sight in one eye?---Yes.

20

Any other injury however severe not meeting those particular requirements will not come within the meaning of the second limb of this clause?---Yes.

So for somebody who suffered a serious injury but doesn't meet one of those six tests they would then need to fall to part 3?---Yes.

25

All right. I will take you now to part 3, which is at the top of 0682. So in that circumstance, the member will have to have become so disabled by bodily injury or illness that the member will never be able to perform at least two of the following activities of daily living. And this is a clause that is not uncommon in group life policies, a clause that requires an activities of daily living test to be satisfied?---I believe that to be so, yes.

30

And the activities of daily living in this particular clause are dressing, bathing, toileting, mobility – meaning getting in and out of a bed and a chair without assistance, and feeding?---Yes.

35

Do you accept that a REST member could be very seriously injured and unable to return to their chosen profession or something equivalent to it, but because they don't come within the definition of gainful employment, be – not be entitled to a TPD payment?---I mean, it is possible that someone who is ill or injured will not necessarily meet parts 2 or 3.

40

They could be quite seriously ill or seriously injured and still not able to meet it?---I guess it would be helpful, I think, if you give me an example but – but potentially, yes.

45

Well, for part 3 you've got to not be able to perform two of those functions. And, for example, examples that have come up, not necessarily in respect of REST but in respect of others, are where there has been a debate about whether a person is capable of feeding themselves if they're unable to cut their food but if the food once
5 cut, they're capable of using a fork to feed themselves. That's an example of somebody who may fall foul on some views, of the feeding test, that person would be held to be capable of feeding themselves?---I guess for parties other than REST, potentially, if that was the case at REST that would be independently reviewed by the trustee and I suggest we would have a strong view on that matter.

10 You would take that up on the member's behalf with the insurer if the insurer formed the view that a person in that situation was incapable of feeding themselves?---Quite possibly, yes.

15 Right. And your team is the team that reviews all declined claims?---Yes.

And do you see many declined claims based on part 2 or part 3 of the definition of TPD?---Not many, no.

20 Not many. Do you know how many you would see a year?---I believe I answered this question in my witness statement as to death and TPD declines in the five-year period on the basis of gainful employment. I could search for it, if you would like.

25 That's all right?---It was very few, from memory.

I will come back to it because it's relevant in the context of some other questions that I want to ask you now about income protection insurance?---Yes.

30 REST provides its members with income protection cover?---Yes, we do.

All members?---It is part of the default insurance that a member would receive when we receive a contribution on their behalf.

35 Thank you. Is it a form of insurance cover that's particularly valuable to RESTs member demographic?---It certainly is, yes.

Under the REST group life policy, an income protection benefit is payable and when it is payable it's calculated by reference to the member's pre-disability income?---That is correct, yes.

40 So if the pre-disability income was nil, necessarily the income protection benefit is nil?---That is correct, yes.

45 Does REST have any processes in place to detect whether members are unemployed?---Insomuch as an employer would let us know or the member would let us know, yes, we would.

Save for the employer or employee letting you know, is there any way that REST would detect that - - -?---Not that I'm aware of, no.

5 And that means that a member in that situation would continue to be charged premiums for income protection insurance?---Hypothetically, yes.

And you've already agreed with me that a person in that circumstance would not be entitled to any payment?---Yes.

10 Do you think that in those circumstances, that the income protection insurance becomes a junk insurance product?---No, I didn't – I don't believe it is. You know, the principle that REST takes is to provide what it believes is a very valuable insurance to all members, if possible. Now, there will be cases where because we're not aware of information, there may not be a benefit payable but I certainly don't
15 think, you know, the insurance we offer could possibly be classified as junk insurance.

At paragraph 51 of your statement in answer to Rubric 6-41, you've stated that 37 member claims were declined for income protection insurance because the member
20 was unemployed?---Could you take me to that part of my statement, please?

Yes, I can. It's the witness statement in answer to Rubric 6-41. It's WIT.0001.0144.0001. And if we could please move to paragraph 54 – sorry, 51. Would you like to see the whole of that page rather than the blown-up
25 paragraph?---Thank you. Sorry, could you ask me that question again.

I said at paragraph 51 of your statement, you've stated that 37 claims were declined because the member was unemployed?---Could we please go to 42(a)?

30 Yes. Just go to page 0014?---That actually refers to what we were talking to on Friday where there is a combination of a member's account balance and their employment status.

35 Right?---So that is – that would be declined on a similar basis to what we were discussing about the previous claim this morning.

Thank you. And while we're in this document, could we please go to 0011. Actually, in fairness to you, Mr Ross, I might take you a page before that to 0010. This is a discussion, I hope you can see there, about death and TPD claims?---It is.
40

You recall that you said to me before that you had put in your statement the figures for declined claims?---Yes. Could I clarify with this one here, this definition we've included here is actually in relation to a product REST has called REST Select which is not our default product, and we had one declined claim in the five-year period.
45 And that's why we've included - - -

In respect of that product?---In respect of this page here with at work definition that is specifically related to the REST Select product.

Thank you.?---And that is one claim in the five-year period.

5

You will see at the foot of that page there is a heading Declined Claim Figures - - -?---Yes.

10

- - - and if we go over the page, please, to 0011. You will see in paragraph 32 you say:

15

During the five year relevant period the prescribed employment status requirements referred to in paragraphs 18 to 31 above led by reason of the application of different policy conditions to 224 insured death or TPD benefit claims being declined. In no cases did they lead to an amount of the benefit being reduced.

?---Yes.

20

Is that a reference to the gainful employment definition that we were speaking of in connection with TPD claims?---No.

25

No?---No. The 224 is in reference to the combination of the account balance and employment status, I believe.

And isn't gainful employment - - -?---Gainful employment is included in those 224.

Yes, thank you?---Yes.

30

That's what I was putting to you?---Yes.

So it was in that 224 include claims that have been denied on the basis of the gainful employment definition?---Yes, a subset is - - -

35

It's not exclusively those but some of those are those?---Yes.

Thank you. Mr - - -?---Just – just for – I don't want to give a wrong answer but it's in the vicinity of 10 to 20, from memory, were from gainful employment.

40

And what was the balance then? What made up the balance of the 224?---It would have been the combination of the prescribed – or the account balance and employment status, and also I believe we're in the right part of the statement here, what REST refers to as an – the active employment part of its policy.

45

Thank you. Mr Ross, do you agree that simple terms and clear exclusions are preferable to complex terms and confusing exclusions in group life policies?---I do.

As long as they balance with, in RESTs case, being able to provide meaningful cover but yes, I agree with your proposition.

5 Do you think that simplicity of expression and clearness of operation is more important in the group life context because the member doesn't have somebody advising them about the policy?---Yes.

10 Thank you. And it's also important because for many people group life insurance will be the only form of life insurance they hold?---Yes.

15 Do you think that there would be any benefit in there being universal definitions for group life policies for key terms and exclusions?---I think theoretically, yes, would be my answer to that. But how that would work in practice, I don't know. But I think there is merit to that in theory, yes.

20 Thank you. Do you agree that it's important for trustees and group life insurers to communicate key terms and exclusions to members?---Yes, I do.

25 And do you think that it is important that that be done more than once?---Depending on what needs to be communicated, potentially, yes.

30 It's important that employers and employees are aware that changes to their status might affect their rights?---Yes.

35 And finally, given that REST and other superannuation trustees have an obligation to do everything reasonable to pursue a member's claim, should group life policy owners have staff dedicated to that task, that is, somebody who is expressly in the member's corner to pursue the claim against the insurer?---Well, I can't speak on behalf of other parties, but REST certainly believes so and does.

40 And what team do those people sit within at REST?---That's my team.

45 That's your team?---Yes.

50 And the role of the people in your team is to advocate for the member?---Yes.

55 And is that something that is made known to the administrator engaged by REST?---Yes.

60 I have no further questions of this witness.

THE COMMISSIONER: Thank you. Mr Stoljar.

65 MR STOLJAR: No re-examination, thank you, Commissioner.

70 THE COMMISSIONER: Thank you. Thank you, Mr Ross. You may step down?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[9.58 am]

5 MR COSTELLO: Commissioner, before Mr Stoljar leaves the bar table there are three further witness statements from REST tendered on behalf of – sorry, provided on behalf of REST that I wish to tender.

THE COMMISSIONER: Yes.

10 MR COSTELLO: The first is a witness statement of Natalie Binns in answer to Rubric 6-41. Her statement is dated 31 August 2018 and its document ID is WIT.0001.0145.0001.

15 THE COMMISSIONER: That becomes exhibits 6.229.

EXHIBIT #6.229 STATEMENT OF NATALIE BINNS IN ANSWER TO RUBRIC 6-41 DATED 31/08/2018 (WIT.0001.0145.0001)

20 MR COSTELLO: The second is the witness statement of Mr Paul Howard in answer to Rubric 6-65 dated 7 September 2018, WIT.0001.0155.0001.

25 THE COMMISSIONER: Becomes exhibit 6.230.

EXHIBIT #6.230 STATEMENT OF PAUL HOWARD IN ANSWER TO RUBRIC 6-65 DATED 07/09/2018 (WIT.0001.0155.0001)

30 MR COSTELLO: The third is a witness statement of Mr Joseph de Bruyn sworn in answer to Rubric 6.64 and dated 12 September 2018. It is WIT.0001.0164.0001.

35 THE COMMISSIONER: Exhibit 6.231.

EXHIBIT #6.231 STATEMENT OF MR JOSEPH DE BRUYN IN ANSWER TO RUBRIC 6.64 DATED 12/09/2018 (WIT.0001.0164.0001)

40 MR COSTELLO: Thank you, Commissioner. Commissioner, the next case study involves AMP. If we could adjourn for a brief moment to reconstitute the bar table.

45 THE COMMISSIONER: If I come back at five past.

MR COSTELLO: Thank you, Commissioner.

And you've prepared a witness statement which addresses the topics and questions in Rubric 6-30 and 6-31. Is that correct?---That's right.

5 And is that statement dated 10 September 2018?---Yes, it is.

And do you have that statement with you?---I do.

Are the contents of that statement true and correct, Mr Sainsbury?---They are.

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

THE COMMISSIONER: That statement and its exhibits becomes exhibit 6.233.

15 **EXHIBIT #6.233 STATEMENT AND EXHIBITS OF MR SAINSBURY
ADDRESSING RUBRIC 6-30 AND 6-31 DATED 10/09/2018**

20 MR HOLLO: And you've also prepared another witness statement, haven't you?---Yes, I have.

And that statement addresses certain topics and questions specified in Rubric 6-69?---That's right.

25 Is that statement dated 5 September 2018?---Yes, it is.

And do you have that statement with you?---I do.

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

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

THE COMMISSIONER: That statement and its exhibits become exhibit 6.234.

35 **EXHIBIT #6.234 STATEMENT AND EXHIBITS OF MR SAINSBURY
ADDRESSING RUBRIC 6-69 DATED 05/09/2018**

40 MR HOLLO: Thank you.

THE COMMISSIONER: Yes, thank you, Mr Hollo. Yes, Mr Costello.

45 **<CROSS-EXAMINATION BY MR COSTELLO** [10.07 am]

MR COSTELLO: Mr Sainsbury, AMP have two RSE licensees, AMP Superannuation Limited and National Mutual Superannuation Limited?---That's right.

5 And you're the group executive, wealth solutions and customer?---That's right.

To whom do you report?---I report to the CEO.

10 And what's your role in connection with superannuation?---So I provide many of the administrator functions on behalf of the trustee around product, product selection, product management, and including strategic marketing related functions.

AMP also has a trustee services unit?---Yes, it does.

15 And that unit is independent of the business?---Yes, it is.

You're not independent of the business?---No, I'm an agent of the trustee in my role.

20 And you are relevantly the business?---Yes.

Thank you. For present purposes, we're concerned with insurance in superannuation. Do you agree that it is important for superannuation trustees to act in the interests of their members in connection with group life policies?---Yes, I do.

25 And on occasion, that may include advocating for a member in dispute with a group life insurer?---Yes.

AMP Life is another wholly owned subsidiary of AMP?---It is.

30 And it's the group life insurer for most members who have superannuation with AMP?---That's right.

35 You explain in your – one of your statements that AMP Life is also the administrator of AMP Superannuation Limited's funds?---That's right.

And it is also the administrator of some of National Mutual Superannuation Limited's funds?---That's right.

40 Could you explain in general terms what the role of an administrator is?---The administrator creates the products that the trustee makes available to members, and ensures that those products are effectively administered on behalf of the members, and – and that ongoing servicing-related matters are supported for the members of the funds.

45 One of the roles of the administrator is to ensure compliance with prudential standard SPS 250?---That's right.

And you have some familiarity with that standard?---Yes.

It's a regulatory standard produced by APRA and it has the force of law?---Yes.

5 I might just take you briefly to that standard. It is RCD.0021.0020.0001. I will say the number again in case I got it wrong. RCD.0021.0020.0001. Thank you. So this is Superannuation (Prudential Standard) determination number 5 of 2012. More commonly referred to as SPS 250. And if we just go to page – the fourth page of that document. It sets out here that:

10

The prudential standard establishes requirements for an RSE licensee with respect to making insured benefits available to beneficiaries.

And after the larger paragraph:

15

The key requirements of this prudential standard are that an RSE licensee must also –

And then the second bullet point:

20

Formulate and give effect to appropriate selection processes for, and due diligence of, insurers and monitor relationships with insurers on an ongoing basis.

25 ?---Yes.

You're familiar with that. And then if we turn over the page, there's the requirement for an insurance management framework. And you've answered some questions about insurance management frameworks in your statement?---Yes.

30

And then if we could move to about the seventh page of the document. There's the requirement for the insurance strategy?---Yes.

35 You've also answered some questions about that. And then if we could move across to paragraph 22, please. Do you see 22 is the first paragraph beneath the heading Selection and Monitoring of Insurers?---Yes.

And it requires an RSE licensee to:

40

Develop and implement a selection process for choosing an insurer that includes, at a minimum, consideration of the prospective insurer's terms of cover and exclusions, claims philosophy, the reasonableness of the premiums to be charged and terms of any delegation to any other person of functions associated with the making available insured benefits. Undertake a due diligence review of the selected insurer and be able to demonstrate to APRA the appropriateness of the selection process and due diligence review and how it is applied.

45

And then in 23, the licensee:

5 *Must be able to satisfy itself and demonstrate to APRA that the engagement of an insurer is conducted at arm's length and is in the best interests of the beneficiaries.*

Do you see that?---Yes.

10 Is it appropriate for AMP Life, which is the administrator of the funds, and the group life insurer, to be tasked with ensuring compliance with those parts of SPS 250?---I think in relation to the – the – the matters that you've described, trustee services plays a lead role on behalf of the trustee board in conducting those reviews and ensuring that due diligence processes are followed.

15 You say in paragraph 67 of your 6-31 witness statement – I can take you to it, if you like – that:

20 *AMP Life's responsibilities include undertaking assessments of potential insurers, recommending replacement insurance arrangements and assisting the AMP RSE licensee to negotiate the terms and appointments with the preferred insurer.*

?---That's right.

25 Isn't there a clear conflict in AMP Life undertaking that task?---The people that perform that task are not associated with the insurance arm of AMP Life. AMP Life is an administrator in the areas under my responsibility that perform those processes, and then they refer them to the trustee for review and approval.

30 You set up some sort of bifurcation within AMP Life so that the people that are making recommendations about whether AMP Life is the appropriate insurer are not connected with the insurance aspect of AMP Life?---That's right.

35 And you think that that's an appropriate way to deal with SPS 250s regulatory requirements?---Yes, I do.

All right. Commissioner, I tender that document.

40 THE COMMISSIONER: Prudential standard SPS 250, RCD.0021.0020.0001, exhibit 6.235.

EXHIBIT #6.235 PRUDENTIAL STANDARD SPS 250 (RCD.0021.0020.0001)

45 MR COSTELLO: How long has AMP Life been the predominant insurer of AMP superannuation funds?---The exact date I couldn't give you, but certainly a very long

time. I think the current master outsourcing agreement was put in place at 1995 or last reviewed in 1995.

Last reviewed in 1995?---I believe. I'm not entirely sure about that.

5

Are there ever tenders?---I don't – don't believe so.

Thank you. Mr Sainsbury, could you explain the concept of delinking?---Most certainly. A number of the corporate superannuation plans that AMP administers require in their arrangements that upon cessation of employment in a corporate super scheme, that the member must be moved to a different product. That term is called delinking.

10

So in simple terms, it's where a person has superannuation through their employer with AMP, they cease working for that employer, they maintain superannuation with AMP, but in a different product?---That's right.

15

Thank you. And you're aware that there has been some recent examination of default insurance settings in connection with delinked employees?---Yes, I am.

20

Thank you. And one of those default settings that has received some recent consideration is smoker status of the member?---Yes.

Thank you. Can I take you to a document, please, AMP.6000.0306.0063. This is an email from a financial planner to something called planner liaison. Is that a mail box that you're familiar with?---I'm not familiar with it but it – it would be the location that planners can send in inquiries to – to AMP.

25

Thank you. And this planner has emailed plan liaison and says:

30

Hello. We have recently become the servicing planner for –

A particular client:

He has been listed as a smoker on his policy. He was unaware that he was listed as a smoker as it doesn't say this on his annual statements. From meeting with me we discussed his current position for insurance and I have informed him that he was listed as a smoker. He was shocked to hear this as he has never been a smoker when having the policy or within the 12 months prior. He informed me that he "last smoked" when he was 13 years old at Scouts. The member was delinked from a corporate superannuation client quite a number of years ago and somehow ended up with being listed as a smoker. He has around \$1 million of life insurance and was paying \$2600 a month as a smoker before we spoke. We sent the non-smoking statement in a few days ago and his premium has consequently reduced to just over \$1600 per month. The client has a number of AMP policies and is extremely unhappy with AMP with the above overcharging. The client requests a revision and refund to the

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client's account for the overpayments of insurance from the commencement of the policy. Can you please help our client for the above circumstance?

5 So this is an example of a case where somebody has delinked from an AMP superannuation plan, they've remained an AMP member?---Yes.

They've kept their superannuation with AMP, and they have kept life insurance through their AMP superannuation fund?---That's right.

10 And they've paid an additional loading on their premium because of their smoker status?---No, that's not right.

15 All right. Tell me what's not right about that?---So – so when – when members delink from the corporate schemes into flexible lifetime super, the – the terms of that delink up until 2006 were that they went into what was called the standard rate. And the standard rate included lives that were both delinked members from corporate super schemes, and by that I mean we don't have full understanding of the medical health of the individual. Together with - - -

20 THE COMMISSIONER: You don't have full understanding of? You said we don't have full understanding of – and I then lost the rest of your answer?---Sorry, Commissioner, the health of the individual. And – and smokers are also included in that same standard rate group.

25 MR COSTELLO: All right?---It is in fact a hybrid rate.

Okay. I will come back to the standard rate in a moment. First, perhaps, Commissioner, could I tender that document.

30 THE COMMISSIONER: Email financial planner to planner liaison, AMP, 27 February 2013, AMP.6000.0306.0063, exhibit 6.236.

35 **EXHIBIT #6.236 EMAIL FINANCIAL PLANNER TO PLANNER LIAISON, AMP DATED 27/02/2013 (AMP.6000.0306.0063)**

40 MR COSTELLO: Could I now thank you to AMP.6000.0306.0069. . This is a document generated within AMP after that request had come through from the planner. And it seems to have been prepared by Celeste Semaan. Are you aware who Ms Semaan worked for?---I'm not.

45 Thank you. In any event, it appears that she has done some investigation. And she says – she details the complaint. Notes that it was a delinked member. Upon reviewing his plans with his new planner the client was told he was listed as a smoker. You agree with that much, at least?---I agree with the way that's described.

Thank you:

5 *The planner has now requested that we refund the client's previous premiums due to the fact that we do not include the smoker details in the annual statements.*

?---Yes.

10 Do you agree with that?---Yes.

And you will see there the date of the delink was 20 June 2005?---Yes.

15 And you saw from the email that I've just taken you to that the planner identified this issue in 2013?---Yes.

So this has gone on for some time. And then you will see recommendation based on your investigations, the second last row:

20 *Whilst I believe that not including the smoker status in our annual statements is unethical, I don't see why we should compensate this member based on his account balance over other members who were requesting the same thing with lower balances and were declined.*

25 Do you see that?---Yes.

Do you have any idea what this document is?---Well, by – by its definition, it – it appears as though it's a request from the adviser through plan liaison to – to reimburse premiums because of a non-smoker status - - -

30 This is someone within planner liaison doing an analysis or making a recommendation to somebody?---It's somebody. I'm not sure whether it's planner liaison or whether it's in the insurance product area.

35 Thank you. And you will see that the estimate of the rebate in the last cell is \$72,000?---Yes.

40 But estimate based on a 40 per cent reduction as at current change on 26 February 2013. So the estimate there is that an additional \$72,000 has been paid in premiums between 2005 and the beginning of 2013 as a result of the status?---Yes.

45 And Ms Semaan thought it was unethical not to include smoker status in the annual statements. Do you agree with that?---No, I don't. Unethical for me would imply a blatant attempt to cover up something. When – when a member delinks into FLS, the welcome letter that they get on the first page contains an election for non-smoking to enable members to – to – to receive the benefit of that lower premium.

And is that structured that way on the assumption that the only time that a person could ever have changed their smoking status is the time they're delinked?---No. It's structured on the assumption that that is probably the time that is – superannuation arrangements are most pressing in people's minds when they get that letter. The
5 annual statements that are issued subsequent to that don't disclose, or at least didn't back in – up until 2013, the smoker status of the individual but certainly the premiums and the sum insured were shown on the statements throughout that time.

10 Do you accept that at a minimum it would have been better if the annual statements did disclose the smoker status?---Yes, I do, with the benefit of hindsight.

And particularly in circumstances where, as in the case of this member, there was a very significant differential in the premium as a result of it?---Yes.

15 You agree with that? Can I tender that document, please, Commissioner.

THE COMMISSIONER: Request for reversal of premium – have we got a date on it anywhere?

20 MR COSTELLO: We don't.

THE COMMISSIONER: Request for reversal of premium, AMP.6000.0306.0069, exhibit 6.237.

25

**EXHIBIT #6.237 REQUEST FOR REVERSAL OF PREMIUM
(AMP.6000.0306.0069)**

30 MR COSTELLO: Thank you. Could I now take you to AMP.6000.0305.0139. This is the formal letter that responds to the request to refund the differential in the premiums. Although it is redacted, the letter is in fact sent to the member, not to the financial adviser?---Mmm.

35 And you will see that it states there that, in the first paragraph:

The design of your AMP custom super plan meant that upon ceasing employment with your employer you are required to exit the plan and an employer guide was provided to you.

40

Then under the next heading Transfer of Insurance from Custom Super to AMP Flexible Lifetime Super Plan. So AMP flexible lifetime super plan is the delinked plan that the member moves to?---Yes, it is.

45 Thank you:

As the insurance formed a part of the plan that you held while you were employed with your previous employer, this insurance was transferred to your new personal plan when your employment terminated automatically.

5 ?---Yes.

And then the next paragraph down you will see reference there to:

10 *The cost of insurance premiums under the AMP flexible lifetime super plan were deducted taking into account your delinked smoker status*

?---Yes.

Do you see that? And then:

15

While under the customer super plan your delink smoker status for insurance was not required as the insurance was specific to your employer, all employees employed by (that company) received the same cover. Your delink smoker status only became relevant when the delink occurred to the AMP flexible lifetime super plan and you were advised accordingly. We do not assume that you are a smoker, and so the smoker status you were applied with was a standard delink rate which is different to an actual smoker rate.

25 And that's the point that you were making before?---That's right.

Was there an actual smoker rate?---Yes, there was.

30 There were three rates at this point in time?---No, my apologies. There were three rates from 2006 onwards.

From 2006?---That's right.

35 So that is at the date of this letter there were three rates?---There were two rates as at the date of this letter, I believe. My apologies. Is this 2013?

It is?---Yes, that's right.

So there were three rates?---That's right.

40 And those rates were non-smoker?---That's right.

Standard and smoker?---Non-smoker, delink and smoker whether - - -

45 Non-smoker – sorry, non-smoker, delink - - -?---So non-smoker, a delink category and a smoker category.

What was the difference between the delink and the smoker category?---So in 2006, the delink category was created to separate the standard rate between smokers and delinked members which had the effect of lowering the premium for the delink members because the premium rates were not as significant as a smoker rate.

5

How would AMP know if somebody is a smoker?---They don't know unless they're underwritten. So in these plans, increases in cover can have individual underwriting and if there are smokers declared, then you will naturally price that accordingly.

10 So for a non-underwritten member there were only two rates?---That's right.

Thank you. Was this member underwritten?---No. I believe the member may have been underwritten in the custom super product. And – and on delink actually carried through some of the arrangements associated with that underwriting.

15

For a non-underwritten member there were two rates?---Yes.

There was non-smoker and delink?---That's right.

20 And given that, the delink rate is, in effect, the smoker rate, isn't it?---No, because it reflects the risks attached to factors other than just smoking.

Such as?---Well, it could be any – any range of – of events. If a member is approved under an automatic acceptance limit, the insurer doesn't really know the health of the member, and so the experience of that fund reflects unknown medical conditions those members may have as well as smoker rates.

25

Well, is that right? All a person needs to do to move to the non-smoker rate is to fill out a non-smoker declaration?---That's right.

30

The only differential between the non-smoker rate and the standard rate is whether or not somebody has completed that declaration?---That's true.

35 So necessarily, the only difference between the two rates is the smoker status?---I'm not a pricing expert but it's my understanding that the premiums are set based on the past experience of the fund or the pool of risks or lives insured. And as a result, there is sufficient differentiation between the health of the non-smoker and a smoker to warrant a different premium in the event that they declare they are a non-smoker.

40 Well, I think that that statement probably is just confirmation of the fact that the material difference between the two is whether the person is a smoker or not?---On the surface, I understand the point you're making. I believe that from 2006 onwards the fact that a smoker rate was differentiated from a delinked rate which was also differentiated from a smoker rate is evidence that there are different risk factors at play between not just smoker and non-smoker.

45

Well, an underwritten rate has got no relevance to somebody who is not underwritten does it?---No it hasn't.

5 So we can put to one side what happens to somebody who is being underwritten because an underwritten policy is necessarily bespoke in that it responds in a price sense and perhaps in a coverage sense to the particular circumstances of the particular insured?---Yes. But only to the amounts above the automatic acceptance limits.

10 Yes. But its differential from group life on that basis. Group life is necessarily an insurance policy that covers a mass of people?---Yes.

15 One way that AMP chose to differentiate the premiums on group life policies was if somebody was a non-smoker?---That's right.

And, therefore, if they were not – if they did not take a step to notify AMP that they were a non-smoker, then they were, in effect, paying a smoker rate?---No, I don't agree with that statement.

20 Do you think that you're splitting hairs?---No, because the premium rates are set based on more events than – than pure smokers.

25 Well, of course they are. All premiums for life are set on all manner of bases but the simple point remains the only difference between paying the non-smoker rate and the other rate was whether or not you were a smoker?---That's right.

So nothing else matters?---To get the non-smoker rate, that's true.

30 Thank you. Do you think that it was a little cute in this letter to say that:

We do not assume that you are a smoker and so the smoker status you were applied with was a standard delink rate which is different to annual smoker rate in circumstances where there was no actual smoker rate.

35 ?---I think the wording could have been better

It's just wrong, isn't it? There was no actual smoker rate?---No, that's true.

40 It's misleading the member by leading the member to believe that there was another rate that did not exist?---Well, I think it's trying to – to outline that the factors included in the premium are matters other than just smoking. So it's seeking to – to illustrate that point that the delink members' lives and the smoker lives are actually in a blended rate.

45 Well, sitting there reading that sentence:

We do not assume that you are a smoker and so the smoker status you were applied with was a standard delink rate which is different to an actual smoker rate.

5 Sitting there now, reading that sentence, do you think that there is any way that a member could have understood the nuance that you've just tried to attribute to that sentence?---No, I think it's – it's difficult to understand for a member.

10 Thank you. Can we move to the next page of that document, please. It says at the top:

15 *As AMP was not contacted the insurance cover continued and you were charged delink smoker premiums for this cover accordingly. I have checked our systems and can find no record of the returned mail to indicate that you had not been issued with the document noted in this letter.*

And then there is AMPs decision which was:

20 *We will not be refunding any excess delink smoker premiums charged from 2 July 2005 back to your plan.*

?---Yes.

25 Do you see that? Commissioner, I tender that letter.

THE COMMISSIONER: Letter 15 March '13, AMP to member concerning "your inquiry", AMP.6000.0305.013, exhibit 6.238.

30 **EXHIBIT #6.328 LETTER DATED 15/03/2013 AMP TO MEMBER CONCERNING "YOUR INQUIRY" (AMP.6000.0305.013)**

35 MR COSTELLO: Mr Sainsbury, you're aware that some time after receiving that letter the member lodged a complaint with the Superannuation Complaints Tribunal?---Yes, I am.

40 Thank you. If I could now show you another document. It's AMP.6000.0305.0138. For reasons I'm not sure, this comes through in exceedingly small font but perhaps if we could start from the email at the bottom and blow that one up. The very foot of the page starting from Antoinette Davino. This is an internal AMP email chain and I will just read it up the page quickly:

45 *Hi Josh. We have another SCT matter regarding delinking and the higher premiums charged.*

Is that reference to the fact that there have been other matters that had gone to the Superannuation Complaints Tribunal on this issue?---I'm not sure. I'm not familiar with the complaints at that time, but it does indicate that there are – there is some consumer matters - - -

5

This might not have been the first time this question had come up?---Potentially.

Thank you. That part of the email can come down now. And then if we could blow up the main email that's in blue. From Ms Semaan to Ms Davino. Do you know who any of these people are? You will recall I asked you earlier about Ms Semaan and I said who does she work for?---Yes.

10

There's a footer at the bottom there that might assist you. It doesn't assist me to understand who she works for within AMP?---She works for, according to that, the operations function which is where administration or record keeping and customer servicing functions are performed.

15

I know that perhaps sometimes the lines are a little blurred, but is this happening within AMP Life?---This was happening as part of AMPs Life's administration.

20

Of the fund?---Yes.

Thank you. The email – the first heading is the Trustee's Overall Position. And it says:

25

AMP Life has investigated the complaint regarding the insurance smoker status for the member's superannuation plan. And our response remains the same. This complaint was also reviewed by risk product in March during the complaint process and the rebate of premiums was declined. AMP Life will not be refunding the smoker premiums charged on this plan due to the fact that we have clearly explained to the client through various correspondence what would happen to his plan and the insurance features once he left his employer.

30

This is – I just want to make sure that I properly understand this – this is AMP Life, in its non-insurance capacity, forming a view on behalf of the trustee about whether AMP Life, as the insurer, should refund premiums. Is that what's going on?---I think there's two – there's two elements to this. The first is what you've just said is true in relation to the operations function, but it appears as though that complaint was referred to the insurer, which is defined as Risk Product, for – for – for a consideration as well.

35

40

So this is Ms Semaan with an AMP Life as insurer hat on, is it?---No, I believe this is with AMP Life the administrator.

The administrator. All right. So when she says:

45

AMP Life will not be refunding the smoker premiums.

She's making a decision on behalf of the insurer while acting in her capacity as administrator for the trustee?---It appears as though, having had feedback from the product area - - -

5 The product area?---Yes.

Is that your people?---No.

Who - - -?---It's the insurer.

10

The insurer?---Yes.

Thank you. The second paragraph:

15

Furthermore, AMP Life has consistently kept the member informed about his insurance cover by issuing annual statements that clearly show the insurance coverage attached to this plan and the member has had multiple opportunities over the years to ask AMP Life to cancel this insurance or challenge its validity.

20

Do you accept that that sentence has got nothing to do with the member's complaint?---Yes, I do. Other than the opportunity for the member to challenge the premiums that – that he was paying as displayed on the statements.

25

This complaint wasn't about the fact of insurance and whether it was valid, it was about the amount being paid for it?---That's right.

It then says:

30

AMP Life has a responsibility to treat all of our members fairly and we cannot make exceptions that may compromise our position with other members that may have requested the same refund due to their own negligence.

35

Does that mean that the better position is for AMP Life to treat all members in this category unfairly?---No, I don't believe that was the intent of the statement.

She then says:

40

AMP Life would have honoured a claim subject to an assessment had there been one made during the period and therefore our position remains that we will not be refunding the member any insurance premium fees.

45

Again, that goes to the fact of the insurance, not to the cost of the insurance?---Yes, I agree.

And it certainly sounds, from the language used there, that the person writing this email was considering the position on behalf of AMP Life the insurer?---I can't comment whether that's true or not.

5 All right. And then you will see there's an extract of the complaint there at the bottom. And it says complaint description note:

Client delinked from custom super in 2005. The insurance came across on smoker rates.

10

And there's nothing in this internal correspondence that seeks to suggest that statement was wrong, that the insurance came across on smoker rates?---Yes It has been very clear in the preparation of this witness statement that there is a lot of inconsistent understanding of the – of the premium rates that are applied, and labels
15 that are attached to things that in fact have not proved to be true.

Thank you. I tender that document, Commissioner.

20 THE COMMISSIONER: Internal AMP emails concerning SCT complaint, September 2013, AMP.6000.0305.0138, exhibit 6.239.

EXHIBIT #6.239 INTERNAL AMP EMAILS CONCERNING SCT COMPLAINT, SEPTEMBER 2013 (AMP.6000.0305.0138)

25

MR COSTELLO: Could I take you now please to AMP.6000.0305.0268. This is correspondence from AMP to the Superannuation Complaints Tribunal about the member's complaint to that tribunal?---Yes.

30

You have seen this. And if we could please move to – perhaps if we could put 0269 and 0270 on the screen together. This is AMP setting out its position. At the foot of the first page:

35 *The trustee is satisfied that the member received adequate disclosure to enable him to understand that higher premiums would apply upon transfer to FLS –*

That's flexible lifetime super?---That's right.

40 Continuing –

...and that he needed to complete a non-smoker's declaration to have his premium adjusted to a reduced rate.

45 Just pausing there, there was one occasion when he could have done that and that was on the delink happening?---That's right. On the welcome letter.

Thank you. And then it says:

It is not the trustee's practice to treat members as smokers by default.

5 Have you now accepted that that is inaccurate?---No, I haven't.

All right:

10 *At the time they are transferred from an employer-sponsored plan, AMP does not know the member's smoking habits and therefore the members are charged a standard insurance premium rate. Members are then offered a reduced premium if they complete a declaration that they are non-smokers but this is only possible after the member informs AMP that they are a non-smoker. The trustee maintains it has acted fairly and reasonably in declining to refund the*
15 *difference in standard and non-smoker rates back to the transfer to FLS.*

So that was the position. And I thought that you and I had got to the point where you acknowledged that for all intents and purposes, there was a non-smoker rate and a smoker rate?---No, I believe I said that there was a non-smoker rate and a hybrid
20 rate.

And the only difference between the two was whether or not somebody completed a non-smoker declaration?---That's right.

25 And in those circumstances, there was a non-smoker rate and there was a smoker rate?---It does – it's not just for smokers, it's for other lives that are insured as well who are non-smokers.

30 THE COMMISSIONER: Can we agree on this: the only point of distinction between the two rates is whether the member has submitted a non-smoking declaration?---That's true.

MR COSTELLO: And it is the case - - -

35 THE COMMISSIONER: So whether you call it a hybrid rate or another rate, or a different rate, the only point of difference is whether the member has submitted a non-smoker declaration. Is that right?---That is true.

Yes.

40

MR COSTELLO: Thank you, Commissioner. The next point is that absent the declaration the person is defaulted to the other rate?---That's right.

Thank you. Commissioner, I tender that document.

45

THE COMMISSIONER: Letter AMP to Superannuation Complaints Tribunal, 17 October '13, AMP.6000.0305.0268, exhibit 6.240.

**EXHIBIT #6.240 LETTER AMP TRUSTEE SERVICES TO
SUPERANNUATION COMPLAINTS TRIBUNAL DATED 17/10/2013
(AMP.6000.0305.0268)**

5

THE COMMISSIONER: I should correct the designation of that exhibit. It will be letter AMP Trustee Services to Superannuation Complaints Tribunal, 17 October '13.

10

MR COSTELLO: Thank you, Commissioner. Mr Sainsbury, I now take you to another document, AMP.6000.0305.0273. This is a letter – it's dated on the second page 30 January 2014 from the Superannuation Complaints Tribunal back to AMP?---Yes.

15

If I could take you, please, to 0276 of that document. The letter attaches a whole range of documents. This is a document where the member is making the complaint to the tribunal. And you can see in bold at the foot:

20

An increased cost to my AMP Super fund of \$66,000 over the period. I have not only been overcharged an estimated \$66,429.02 by AMP, but also have incurred loss of earnings inside my super fund on the overcharged amount over the period. I was purportedly sent only one letter, back on 22 January 2005, informing me of the non-smoker statement to an address which I never requested, as I have all mail go to –

25

A PO box. And then if we go over the page:

30

A reasonable man would expect to receive more than one notice regarding such a large amount of money, and this disclosure could have easily been made on subsequent annual statements for this issue to have been resolved years ago.

Do you accept that?---Yes, I do.

35

Thank you. I tender that document, Commissioner.

THE COMMISSIONER: Superannuation Complaints Tribunal notice of conciliation conference, 30 January 2014, AMP.6000.0305.0273, exhibit 6.241.

40

**EXHIBIT #6.241 SUPERANNUATION COMPLAINTS TRIBUNAL NOTICE
OF CONCILIATION CONFERENCE DATED 30/01/2014
(AMP.6000.0305.0273)**

45

MR COSTELLO: I showed you there the member had estimated about \$66,000 of increased premiums paid?---Yes.

AMP did its own calculation. I will take you to that document.

AMP.6000.0305.0724. This is a calculation produced by AMP in answer to a request from the Superannuation Complaints Tribunal who wanted to ascertain what the true figure was. And you can see there the premium difference between the actual premiums paid and the premiums that would have applied on the non-smoker rate was \$76,766.58?---Yes.

Thank you. I tender that document, Commissioner.

10 THE COMMISSIONER: AMP premium comparison calculation, 6 June 2014, AMP.6000.0305.0724, exhibit 6.242.

15 **EXHIBIT #6.242 AMP PREMIUM COMPARISON CALCULATION DATED 06/06/2014 (AMP.6000.0305.0724)**

MR COSTELLO: Could I now please take you to AMP.6000.0305.0742. It's another letter from AMP to the tribunal. Do you see under the heading Member's Complaint:

The member was transferred to a personal FLS account upon leaving his employer plan in AMP custom super and the premiums deducted for his EDB insurance –

25 What's EDB?---I think it stands for extra death benefit.

Thank you –

30 *...were deducted at smoker rates.*

Do you see that?---Yes, that goes to my comment earlier about the inconsistent understanding inside AMP.

35 Not everyone has got quite the nuanced understanding of the difference between the two rates that you have?---There are a number of people that do but there are some that don't.

40 Some view a rate where the only difference in the premium being charged is whether the person is being a smoker or not as being a smoker rate as opposed to being a non-smoker rate?---Well, I've been through my point about hybrid rates before.

Continuing:

45 *The resolution the member seeks is for the refund of additional premiums he was charged because he was classified as a smoker.*

This is a letter from a senior trustee officer?---Yes.

If we go over the page to 0743, there is a heading Trustee's Decision. And it sets out there the determinations the trustee made in coming to a decision not to refund the
5 premiums. And then over the page at 0744, paragraph 8, your point is again made:

*It is not the trustee's practice to treat members as smokers by default at the
10 time they are transferred. AMP doesn't know their habits and they're charged
the standard rate and they're offered a reduced discount if they are non-
smokers.*

That's your point?---Yes.

And then over the page to paragraph 9:
15

*AMP addresses the criticism that it didn't include the smoker status in the
annual statements, and says it didn't include them because it wasn't required to
under section 1017D of the Corporations Act.*

20 Do you see that?---Yes.

But I think you've now said there has been a change of position and you now do
include it. Is that right?---In 2013 there was an enhancement to the statements to
indicate whether the smoker status was known by the member.
25

Thank you. Commissioner, I tender that document.

THE COMMISSIONER: Letter AMP to Superannuation Complaints Tribunal, 29
January '15, AMP.6000.0305.0742, exhibit 6.243.
30

**EXHIBIT #6.243 LETTER AMP TO SUPERANNUATION COMPLAINTS
TRIBUNAL DATED 29/01/2015 (AMP.6000.0305.0742)**

35 THE COMMISSIONER: Just before that document comes down, at line 6 of the
page that we presently see on the screen there is reference to whether there is an
additional loading on the premium, and that statement is made in connection with
section 1017D of the Corporations Act. Is that an expression that derives from the
40 Corporations Act?---I'm not – I'm not certain, Commissioner.

Is it right to describe what you refer to as the hybrid rate but it might be referred to as
the non-smoking rate is a rate that had an additional loading on the premium?---No, I
don't believe so. I believe the premiums were calculated based on the experience of
45 the lives in that risk pool.

Well, it would be an unusual calculation of premium if it were not founded on some actuarial assessment, wouldn't it?---No, it would be based on actuarial assessment.

5 And the premium charged was higher than the premium charged to a person who had made a non-smoking declaration. Is that right?---That's right.

Yes. Yes, do go on.

10 MR COSTELLO: Thank you, Commissioner. Could I take you now to RCD.0021.0022.0001. This is the determination of the Superannuation Complaints Tribunal in respect of this matter. And you see there that it recites some of the facts for the decision under review. If we could go to 0007 of that document. Do you see at paragraph 38, the tribunal says:

15 *What is clear, however, and the tribunal finds accordingly, is that after June 2005, the trustee did not send any communication to the complainant bringing to his attention that he was paying significantly larger insurance premiums than would be the case if he was a non-smoker and if he provided a declaration to the trustee to that effect.*

20

And you've agreed with me previously that that was the case?---That's right.

25 Do you think that irrespective of any debate about whether or not the non-smoker rate and the standard rate – sorry, whether the standard rate is, in effect, a smoker rate, irrespective of that debate, do you think that in forming a decision about how to treat this complaint, it was relevant to the – that the trustee had failed to tell the member, more than once, that there was an additional premium being charged because of the absence of the no-smoker declaration?---Well, I – I'm not – I wasn't in the trustee – and I'm not the trustee and I wasn't there at that time. But I – I believe that the trustee was of the view that they were entitled to rely on the communication that was sent to the member. I think by today's standards, with the benefit of hindsight, you would certainly outline more frequently than was the case, the circumstances for an individual member with regards to large insurance premiums.

35

It's not very member-centric to say that eight years ago we sent you a letter and we've charged you a higher premium every year since then without telling you again, is it?---It could be better.

40 If that paragraph could come down. And you can see there at 41 the tribunal addresses the 1017D point and says:

45 *The tribunal acknowledges that the section did not specifically require that details be provided in annual statements that an insurance premium would be cheaper if non-smoker rates applied but the section required that the annual statement must give the member information that the trustee reasonably believed the member would need to understand his or her investment in the*

fund. Higher premiums that were debited to the complainant's account reduced his benefit in the fund.

That was how the tribunal saw that part of AMP's argument?---Yes.

5

If we go over the page to 0008, paragraph 46:

Consequently, the tribunal's view is that it was not fair and reasonable for the trustee to refuse to refund to the complainant's account in the fund the premiums that were debited to his account which exceeded those that would have applied if the complainant had provided a non-smoking declaration to the trustee.

10

?---Yes.

15

And then over the page to 0009, paragraph 52 the tribunal requires that AMP refund the additional premiums and says that:

20

...interest should be added at the earning rates that have been credited to the complainant's benefit in the fund from the dates on which the excess premiums were deducted from his account.

So this complaint was upheld?---Yes, it was.

25

And the member received back the differential premiums, together with the interest that had been lost on the use of that money?---That's right.

And what happened after that? Did AMP pay those amounts to the member's fund?---I believe – I believe that would be the case, but I – I can't confirm.

30

Does AMP accept that it failed to act fairly and reasonably by charging higher premiums every year after 2005 to this particular member?---I think AMP would – would have the view that it could have improved its disclosure to members, but that it did provide the opportunity for a non-smoker declaration to be provided to the member at the appropriate point.

35

Well, let me put it to you again in slightly different terms. Does AMP accept that by failing to communicate to the member that a higher premium rate was being charged because no non-smoking declaration had been received, every year after 2005, that it failed to act fairly and reasonably?---No, I don't – I don't think it was whether it acted fairly or reasonably, because I think it was entitled to rely on the communication to the member at the time of delinking, but I do accept that the disclosures could have been better with the benefit of hindsight.

40

45

So your view and AMP's view is that the superannuation complaints tribunal was wrong in finding that AMP had not acted fairly and reasonably?---Well, the trustee, as you're aware, has disputed the claim from the member as part of the submission to

the SCT, and part of the basis upon which they did that was that there have been previous determinations from the SCT finding that – that multiple communications are not required to members. And it was on that basis that the trustee formed that view, I believe.

5

Yes. But that view was proved incorrect by the reasons that I've just taken you to?---Can you explain - - -

10 I've just shown you a paragraph in the trustee's – sorry, in the tribunal's reasons where it said that the trustee failed to act fairly and reasonably?---Yes, I understand.

In respect of this member?---Yes.

15 Do you accept that AMP failed to act fairly and reasonably in respect of this member?---Yes, I do.

20 Is there any reason why this member would be in a different position from anybody else who had been sent one letter about the non-smoking issue, and then continued to be charged premiums after it?---Conceptually no difference.

25 Thank you. Does AMP accept that for the same reasons it failed to act in this member's best interests by continuing to charge the higher premiums?---Yes, I think it's – I think it's appropriate that – that – that the trustee could have communicated more effectively.

Does AMP accept that it failed to handle the member's complaint fairly and reasonably?---No, I don't believe that's the case.

30 Thank you. Is it appropriate for a trustee to presume that a member may be a smoker absent a non-smoking declaration?---That is a fairly standard principle attached to the issue of automatic acceptance in group life policies, that – that you accept those lives on the basis of very limited – limited information. So I think it's reasonable to accept.

35 Are you familiar with ASICs report 529?---I am.

Member Experiences in Superannuation?---Yes, I am.

40 Are you aware that ASIC had something to say about smoker defaults in that report?---Yes, I am.

Can I take you, please, to RCD – this is exhibit 6.228 – RCD.0025.0003.0334.

45 THE COMMISSIONER: Just while that's coming up, the SCT determination of complaint, 6 May '15, RCD.0021.0022.0001 is exhibit 6.244.

**EXHIBIT #6.224 SCT DETERMINATION OF COMPLAINT DATED
06/05/2015 (RCD.0021.0022.0001)**

5 MR COSTELLO: This is the report – and you are familiar with it, I think you have said?---I am, yes.

Thank you. If we could move to 0352, please. And if paragraph 82 could be popped out. ASICs view is that:

10

Trustees should not presume that members smoke in determining their insurance premiums. There are low levels of smoking in the community, with only 14.5 per cent of adults being daily smokers. In these circumstances, it is statistically appropriate to assume a person is not a smoker in the absence of

15

other information about that member or that group of members.

Does AMP accept that?---I can't comment on whether I think that's appropriate from a risk pricing point of view or not.

20 Is that because only the insurer could comment on that?---I believe so.

Wouldn't the trustee have a view about whether or not its members should be charged higher premiums based on a circumstance that only applies to 14.5 per cent of adults being daily smokers?---Well, I think the trustee would have a view that they

25

need to rely on insurers to take into account the risk factors in setting the price for that insurance.

Well, in a negotiation over a group life policy, you have on one side of the table a trustee who is presumably trying to obtain greatest coverage for cheapest

30

price?---That's right.

And you have an insurer on the other side who's looking to make sure that they do a deal that is risk and price appropriate?---That's right.

35 And insofar as the trustee is concerned, the central question is, is the coverage appropriate for the members?---Yes.

And is it appropriately priced?---Yes.

40 And where there is a price effect because of a presumption that is statistically inappropriate, surely the trustee would have an issue with that?---If – if they were defaulted to a smoker rate per se, yes, I – I would agree.

45 But ASIC say it should be to the contrary. They should be defaulted to a non-smoker rate?---I – I imagine – I'm not an insurer, again, and it's not my role to talk about – about the insurer themselves but I – I imagine that in doing so, the insurer would need to accommodate the fact that there are smokers in any risk pool.

Mr Sainsbury, is part of the problem here that AMP views these questions from the perspective of the insurer and not the perspective of the members who are paying for the insurance?---Well, I was just trying to explain the difference between the insurer's view and the trustee's view.

5

But I have asked you a question twice now expressly about the perspective of a trustee who is presumably advocating on behalf of the members and both occasions you have answered by reference to a consideration relevant only to the insurer?---All I am saying to you is I believe the trustee is looking to get the best outcome for its members, and so to the degree that you're suggesting that smokers should be excluded on the basis that would be a trustee view that they would endorse, I imagine.

10

I want to make sure I understand it. Is AMP trustee's position that ASIC is right in paragraph 82 of this report?---I don't know the view of the trustee on that matter.

15

Who would know the view?---The trustee board.

20

Are you aware of whether the trustee board has considered this?---I don't know whether they have considered it.

Should they have?---Yes. I think they should have seen the – the ASIC report.

25

This report was issued in June 2017?---That's right.

Are you aware of any step being taken by the trustees in connection with paragraph 82 of the report?---No, I'm not.

30

Thank you. I want to move to a different topic now, Mr Sainsbury. That document can come down, thank you. In April of this year, someone within AMP Life identified that premiums were still being deducted from the accounts of deceased AMP Superannuation members?---That's right.

35

Are you familiar with that?---Yes, I am.

And following that identification, an investigation was commenced?---That's right.

When did that investigation commence?---It commenced in April of this year.

40

The investigation identified a number of system errors, and those errors alone or in combination meant that in some cases, AMP did not stop deducting premiums from members' accounts and in other cases did not process premium refunds owed to deceased members?---That's right.

45

And these were premiums for life insurance?---That's right.

Where there was no longer a life to insure?---That's right.

And on 12 June, the matter was reported to the insurance and wealth solutions incident working group?---Yes.

5 Where within AMP does that working group sit?---It is coordinated by the enterprise risk management function.

Is that AMP Life or AMP Super or another entity?---It's another entity.

10 Which entity?---Well, it's the AMP Group and it provides support services to the various legal entities such as AMP Life.

Thank you. The working group meets weekly?---Yes. Well, as required, but – but generally weekly.

15 Thank you. The incident was identified in April. Why did it take until June before the matter was reported to the working group?---So there's quite a lot of history in this particular matter, in the sense that it's quite complex, and it goes back a number of years, and in order to quantify the size and the extent of the issue, it was necessary to do a fair bit of investigation, and that investigation takes time.

20

The committee discussed the matter on 20 June 2018?---Yes.

25 And at that meeting the committee determined to report the incident to APRA and to ASIC?---Yes.

And the matter was reported to APRA and ASIC as a breach on 26 June?---That's right.

30 Why did it take six days after the meeting for the regulators to be notified?---Well, that's within the normal reporting timelines for – for the organisation.

Thank you?---Letters need to be drafted, approved, reviewed.

35 I will take you to that notification. You've exhibited it as LGR-3 to your witness statement in answer to Rubric 6-69. It's AMP.6000.0281.0046. This is the breach report. And it's addressed to APRA and to ASIC. And the issue is explained there. ASL is AMP Superannuation Limited?---That's right.

40 As the issuer of superannuation products and AMPL which is AMP Life?---Yes.

Continuing:

45 *...as administrator of the superannuation products including the administration of life insurance at a member level and AMP Life as the insurer have identified instances where insurance premiums charged to the member's superannuation account after the member's death were either not refunded or the amount of the refund was not correct.*

?---That's right.

Has AMP encountered this problem with any other group life insurer?---No, it hasn't.

5

Only AMP Life?---That's right.

Thank you?---Well, sorry, I might qualify it. Where the group scheme is administered on AMPs record-keeping systems, there would be a possibility that – that other group life providers won't have had the – the premiums refunded in the same way because the – the administration of the premiums is deducted from that administration system.

10

Is that something AMP has inquired into?---Yes, it is.

15

And has it ascertained any other insurers where this has happened?---I believe there are other insurers in our latest investigation.

That's the opposite answer to the - - -?---Yes.

20

- - - answer you initially gave me?---Yes, it is.

All right. Thank you. The next paragraph says:

25

The issue impacts members with retail and corporate superannuation products issued by AMP Super who are covered by an insurance policy issued by AMP Life as the insurer.

?---Yes.

30

And:

The investigation has so far identified 3124 members with a total of \$922,902 in premium refunds owing.

35

?---That's right.

And then under that:

40

AMP are currently investigating if other fee types were deducted in error and will notify ASIC of the outcome of this investigation.

?---Yes.

45

And what has that investigation identified?---Well, it's still ongoing but it does appear as though there are other fee types that have been deducted post the date of death that will need to be refunded as well.

All right. It was April of this year that that issue was first identified?---That's right.

Can I take you, please, to AMP.6000.0302.0005. This is another one of those very small emails. Perhaps if the last part of the chain could be blown up first. This is an
5 email chain from April of this year, which I think is discussing the issue that has been identified and is the subject of the breach report?---Yes, it is.

And you will see it's an email from Natalie Tumeth, head of claims, life, fast track and administration. And she says:
10

*Before raising this risk/incident with Fotine, can you email me a summary of what this entails and also your concerns, including what you believe is the correct practice and why. Also, if you have any numbers (in terms of current claim volumes) that would be great. Before raising this with anyone outside of
15 our claims team we will need to make Jen Mitchell is aware –*

Who is Jen Mitchell?---Jen Mitchell was the head of the claims unit.

Was?---Yes.
20

Thank you:

*...is aware of it and ask for her direction on next steps. Due to the sensitivity of what is going on at the moment it's best we raise this matter with her in the
25 first instance.*

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

Then if we go to the next part of the email chain, it's a response from Luke Wilson.
30 It says:

*Hi Nat. Okay. No problem. I will try and get some numbers together based on the current portfolio. This has been going on well before I started in the team so I'm not sure if we are waiting a number from the last 12 months or just on
35 the current open book. Let me know and I will try to get something together early next week.*

When he says "this has been going on well before I started in the team", he doesn't mean the investigation, does he?---No, I – I'm not sure – I believe the – the issue is
40 the problem has been going on for well past 12 months.

Thank you. Then if we go to the top of the page, there's another email from Mr Wilson to Ms Tumeth. He describes the issue in the second paragraph after the bullet points:
45

The issue is that Corp –

Who is Corp?---I imagine it will be corporate superannuation.

Thank you:

5 *...continue to charge premiums for the insurance even after AMP has been notified of the member's passing.*

?---Yes.

10 Continuing:

We have raised this with Corp in the past and asked them why they continue to charge the insurance premiums once they are notified of a customer's death back in 2016. I believe that they were of the understanding the premiums are refunded when the policy is paid which is correct.

15

THE COMMISSIONER: Which is incorrect.

MR COSTELLO: Which is incorrect. Do you still say this issue was identified in April?---Yes.

20

2018?---Yes, this matter that they're talking about here was a concern that was raised in 2016 by – by someone in the corporate super team saying or asking the question:

25 *Was it appropriate that we continued to deduct life insurance premiums even though once the claim was submitted those premiums refunded by the system back to the date of death.*

30 That was raised through a number of people, and then subsequently tested that in fact the system was performing appropriately, albeit it appeared from that email exchange that there was some view that there was in fact a better way to do it which would be to stop the premiums on notification of death rather than refund them once the claim has been admitted.

35 Stopping the premiums being charged when you are notified that the person is dead seems a rather obvious step, doesn't it?---Yes, it does.

But it wasn't taken in 2016?---No, the system was coded to refund it when the claim was admitted.

40

And why was that?---I couldn't tell you.

It doesn't make sense, does it?---No, it's not the best way, in my opinion, and it's not the way other products in that system perform. So - - -

45

I will tender that document, Commissioner.

THE COMMISSIONER: Emails concerning corporate super still deducting premiums until a claim is paid, April 2018, AMP.6000.0302.0005, exhibit 6.245.

5 **EXHIBIT #6.245 EMAILS CONCERNING CORPORATE SUPER STILL DEDUCTING PREMIUMS UNTIL CLAIM PAID, APRIL 2018 (AMP.6000.0302.0005)**

10 MR COSTELLO: Could we now please have AMP.6000.0302.0006. And could the email in the middle which includes the highlighted paragraph please be popped out. Actually, before that's popped out could we please go to the next page which is 0007. And if 0008 could be brought up next to it. And the email chain not including the large table that's at the foot of 0007 and the top of 0008 could be popped out, but
15 not the big table. Thank you. So this email chain commences:

I have discussed this with Georgia and she requested that I refer this to you as you are currently working on a project for this. But I have the below Corp super plan where the client passed away –

20 on a date –

and we were notified on 24 February but premiums are still being deducted from the plan.

25 This is an email from June 2016?---Yes.

So notwithstanding notification on 24 February 2015, the premiums are still coming out in June of 2016. And then there's a request:

30 *Can you please have a look at this and reverse the premiums that were charged.*

35 This is an example of the issue that is ultimately reported to ASIC?---No, I believe this is the issue that I described earlier, which is the system is not – is treating the refund of premiums at a different time to the date of death.

40 Well, premiums are still being deducted from this plan, this says. You were – AMP was notified on 24 February 2015 but premiums are still being deducted from the plan?---Yes. I – I can only assume the claim wasn't admitted at that time. It's a process, as I described, a refund occurs automatically by the system when the claim is actually finalised.

45 THE COMMISSIONER: Refund of what's deducted, refund of what's deducted plus the earnings it would have earned, refund of what?---Commissioner, I believe it's the refund of the premiums but I'm not sure.

So the time value of money goes to AMPs benefit?---Potentially.

5 Charging premiums for life insurance to someone who is dead. That's the position, isn't it?---Yes, that's, that's the way the system is treating it today for a portion of our business.

10 MR COSTELLO: Mr Sainsbury, this is the issue that was reported to ASIC on 26 June, isn't it? In the breach notification which I've already taken you to, AMP notes instances where insurance premiums charged to the member's superannuation account after the member's death?---I would need to see the full email trail.

Yes?---To – to be able to work out where this fits.

15 All right. Well, I will take you up. This is how – this is how it begins?---Yes.

Somebody notifies that AMP has been aware for about 18 months that the member is no longer alive but the premiums for life insurance are still being deducted, and if that part of the document could come down, please. Would you like the opportunity just to read this email before I take you to the next part I want to take you to?---Yes, that would be helpful.

20

Perhaps if 0007 could be put on the screen and made a little larger so that Mr Sainsbury has a fighting chance of reading it. Perhaps if the bottom half could be enlarged for now and then Mr Sainsbury, when you are ready to read the next upper part of the document, you can let us know?---Yes, I'm ready to see the - - -

25

Thank you. If we could go to the top half of that page?---Is that the end?

30 No?---All right.

If we could now move to 0006. And perhaps do the same thing with the bottom half of the page. You tell me when you've read that, Mr Sainsbury, because I've got some questions for you about this part of the email?---Okay. Yes.

35 See there in the top part of the email, Georgina Gabboury writes:

40 *I cannot understand why the premiums continue to come out once we have been notified of a claim. This has caused the following issues: complaints, policies to be closed due to lack of funds as premiums are continually being taken out. We email the trustee about corporate plans not ceasing premiums at time of notification and ask if there is anything in the trust deed.*

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

45 So it seems there have been complaints to AMP about this issue before?---It appears that way, yes.

Thank you. And then if we go up the page, the very first line there:

Hi, Jen and Nat –

5 This is from Mr Wilson who was emailing before about the April 2018 investigation:

This is the email where the issue was raised in 2016 regarding premiums being debited on corporate policies.

10 ?---Yes.

Neither APRA nor ASIC were told AMP were aware of this issue in 2016, were they?---No they weren't

15 Why?---Well, it wasn't considered to be the same issue.

But you've just agreed with me it is.

MR HOLLO: No, he hasn't.

20

THE WITNESS: Well, what I've – what I've - - -

THE COMMISSIONER: Just a moment. I thought there was about to be an objection. There's not. Put the question again.

25

MR COSTELLO: I thought that you had agreed with me that this was the same issue identified in the breach notice, that is fees being charged by AMP for insurance after it has been notified of the fact that a person is dead?

30 MR HOLLO: I object to that question.

THE COMMISSIONER: Yes. Why?

MR HOLLO: The breach notice includes the words:

35

... where insurance premiums charged to the member's superannuation account after member's death were either not refunded or the amount of refund was not correct.

40 That was the issue that was the subject of the breach notice.

THE COMMISSIONER: Yes. Well, Mr Costello.

MR COSTELLO: Thank you.

45

THE COMMISSIONER: Do you want to rephrase the question.

MR COSTELLO: Sure. The issue that was identified in April 2018 was that life insurance premiums had been deducted from the accounts of AMP superannuation members after they were dead and not refunded. Is that right?---That's right.

5 That's as you understand it. And is the only relevance of the breach notification the additional words that the amounts had not been refunded?---Well, the breach in – in this year was because the amounts entitled to the member or to the estate were not – were not refunded. Whereas the issue in 2016 was not that they weren't refunded, it was just that they were refunded at a different time and we should have stopped
10 deducting them on death of – on notification of death.

Is it your understanding that AMP has a continuing entitlement to charge premiums for life insurance to a person who is dead?---No. That's not our practice. It's not our policy.

15 Well, it is your practice, at least in part?---I should say it's not our policy and there are a number of examples of where the refunds have been processed appropriately because it wasn't just a system issue we had, we also had process breakdowns as well.

20 To your mind, would it be a breach of an obligation if AMP were to deduct – to continue deducting life insurance premiums to a member who had died?---Yes.

And that was identified as happening in 2016?---Yes, it was.

25 And was not breach reported?---No, it wasn't.

And as Mr Hollo has just pointed out, has still not been breach reported?---Not that particular issue.

30 Thank you. What does it say about AMP systems that the issue we've just been discussing was identified in 2016 but an investigation was only launched in April 2018?---The – the – the relationship between the 2016 event and the 2018 event are not the same matter.

35 Why was the investigation commenced in April 2018?---It was because as a result of the Commonwealth Bank's circumstances around premiums on – on – on deceased members, a question was asked inside AMP "could this happen to us", and that gave rise to a – a review, which identified the issues that were the subject of the – of the
40 breach report.

Is that as a consequence of the cross-examination of Commonwealth Bank employees at the Royal Commission?---Yes.

45 Thank you. At the time of your statement, AMP had identified that 4645 customers had had premiums deducted and not refunded after the member passed away?---Yes.

And that amounted to about \$1.3 million in premium refunds?---As the latest information we had, yes.

5 Does the \$1.3 million include interest or is it only the amount of the premiums?---I believe that amount calculated included lost earnings.

Included lost earnings?---I believe so.

10 Thank you. Do you accept that AMPs conduct in respect of the charging of premiums for group life insurance where the member has passed away is conduct falling below community standards and expectations?---Yes.

15 Do you accept that AMP has not acted efficiently, honestly and fairly by continuing to charge premiums in those circumstances?---I accept that it has occurred but it's not our – it's not our stated practice.

My question - - -

20 THE COMMISSIONER: Has it charged for something it's not entitled to charge?---Yes, it has.

MR COSTELLO: Do you accept that at least one cause of the conduct was AMPs control systems?---Yes.

25 Thank you. I just want to briefly touch on one last issue, if I may. Commissioner, I'm not sure that I tendered that last document.

30 THE COMMISSIONER: No. AMP emails, April and July '16, AMP.6000.0302.0006, exhibit 6.246.

**EXHIBIT #6.246 AMP EMAILS, APRIL AND JULY '16
(AMP.6000.0302.0006)**

35 MR COSTELLO: Thank you, Commissioner. Mr Sainsbury, on 6 December last year, AMPs then CEO received a complaint in relation to group life insurance. Are you familiar with what I am speaking of?---Yes, I am.

40 Thank you. Could I take you, please, to AMP.6000.0287.0182. This is the complaint that was written to Mr Meller. You have seen this document before?---Yes, I have.

45 I don't want to read the whole of the letter, but let me put a summary of it to you and you can tell me if you agree with it. It's a letter written by the wife of an AMP member. The AMP member has been diagnosed with a very serious medical

condition. The – and the member has become aware that there is no insurance attached to the superannuation account?---That’s right.

And the letter states that the member is in a MySuper option?---Yes.

5

And that the understanding of the member’s wife was that MySuper options had to have insurance attached to them?---Yes.

And it then states:

10

You would imagine our distress and horror to be informed today that this is not the case, that is, that there is no insurance, and that you have not provided any default minimum insurance through your MySuper superannuation offering as required by the legislation.

15

And there’s then a paragraph about an AMP financial planner being assigned and dissatisfaction with the fact that fees have been coming out of the superannuation account on that basis. And there are some questions then put to Mr Meller about how this could happen?---Yes.

20

Mr Meller – you are familiar with all of that?---Yes.

I tender that document, Commissioner.

25

THE COMMISSIONER: Letter to Mr Meller, CEO, AMP, 6 December ’17, AMP.6000.0287.0182, exhibit 6.247.

30

EXHIBIT #6.247 LETTER TO MR MELLER, CEO, AMP DATED 06/12/2017 (AMP.6000.0287.0182)

MR COSTELLO: Mr Meller referred the matter to the office of the AMP customer advocate?---Yes.

35

What’s the role of that office?---The role of the customer advocate is to provide a – a final review to ensure that – that members’ interests have been looked after in circumstances where the member or the complainant is not happy with the normal complaint resolution processes in AMP.

40

And is that role independent of the business?---Yes, it is.

And does the role have any powers itself or does it only make recommendations?---It – it has powers as well.

45

Thank you. The customer advocate's office formed an initial view within about two days. And that's set out in an email, AMP.6000.0287.0165. Before I take you to that email, is this a delinked member?---Yes. This was a delinked member.

5 And what has happened here is that for whatever reason, the employer had alternative superannuation arrangements – sorry, alternative insurance arrangements for its employees?---That's right.

10 So there wasn't insurance attached to the AMP superannuation through the employer?---That's right.

And on the delinking, no insurance was picked up?---That's right.

15 Notwithstanding that the person was in a MySuper product?---They weren't in a MySuper product when they delinked.

Thank you. Notwithstanding that they came to be in a MySuper product?---That's right.

20 Thank you. Could we now please go – thank you. This is an email from somebody within the office of customer advocate to Melanie Howard-McDonald who as I understand it is the customer advocate?---That's right.

25 Thank you. And she says:

30 *Overall, I think there have been a number of occasions where AMP has not been entirely clear. You will see in the important points column that AMP has various approaches to how it refers to insurance in the annual member statements. What I will need to confirm the starting point is a copy of the member guide as that is where the benefits of being category 1 are set out. In his first annual statement there was a statement that "you may be able to apply for additional insurance", which suggests that he did actually have some insurance to begin with, but then goes on to state that if he dies, AMP will only pay the account value at the time.*

35 ?---Yes.

40 Do you accept that at the time the letter went to Mr Meller, that the person was in a MySuper product?---Yes, I do.

And you no doubt accept that there is a statutory requirement for insurance to attach to all MySuper products?---Yes, except where circumstances where the trustee determines that it's not appropriate.

45 Thank you. And had any such determination been made in the circumstances of this particular case?---Yes. I believe the member was considered to be in a category that

– that meant that the – he wasn't offered insurance as part of the MySuper conversion.

Was that a mistake?---I don't believe so.

5

You think that this person, notwithstanding that he was in a MySuper product, ought not have had insurance attached to his superannuation fund?---Yes. So the – the – the – as part of the implementation process, the trustees were presented with a series of circumstances where it may not be appropriate to provide default insurance to the members. They were generally designed to avoid someone paying for something that they couldn't subsequently claim on or circumstances where they may have had alternate insurance arrangements in place and as a result may have paid, again, for insurance that they couldn't or wouldn't use.

10

15 Did the customer advocate agree with that view?---No. The customer advocate, when the review was undertaken, took the view that it was an administrative error that he wasn't offered the insurance at the time.

20

Do you accept that?---With the benefit of subsequent investigation and going back to the project files, the trustee remains of the view that the decision was appropriate.

So the trustee disagrees with the customer's advocate's view in this case?---That's right.

25

Thank you. And what is the basis of the trustee's view that it was appropriate?---On the basis that the member had – had opted out of insurance, and as a result of that wouldn't be offered insurance as part of the condition.

30

How had the member opted out?---So as part of the employer scheme, the employer had arranged the insurance. When the member was delinked to FLS there was a welcome call made to him which talked about him not having insurance cover in place. And that was deemed to be the opt-out.

35

Thank you. This complaint led to an investigation within AMP about whether or not people upon delinking were being provided with the insurance required?---That's right.

40

And what was the result of that investigation?---So the investigation is not complete but our current position and our latest engagement with the regulator is – is that we do not believe this to be a breach. I will – I will say for the member that the customer advocate's investigation was done in a very short period of time and in very difficult circumstances for the client. And as a result of that, the Group believes the outcome that was delivered for the – for the client or the member and his family was – was a very good outcome in the context of granting default cover and also granting an ex gratia payment for the amount of insurance when he rolled in other superannuation into AMP.

45

Do you think it was a very good outcome?---Yes, I do.

5 But you don't think it was the right outcome?---So for the circumstances at the time, considering the individual matter, AMP is 100 per cent behind the outcome for that member.

But might not be for a member in a similar position?---Well, the trustee's view is the reasons why they – they settled on those exclusions are still appropriate.

10 You said that you formed the view it wasn't a breach?---Yes.

But AMP issued a possible breach notification to APRA and ASIC about this issue, didn't it?---Yes, we did.

15 On 4 June 2018?---Yes.

And are you aware that APRA rejected that letter and invited a proper notification?---Yes, I am.

20 On the basis that it wasn't interested in a proper – sorry, on a possible breach, it wanted to know what AMPs view was in fact. And that resulted in a formal breach notification - - -?---That's right.

25 - - - being lodged. And was that in error? Is that your evidence?---It was – it was lodged with our best information at the time without the investigation being complete, and the subsequent investigation has yielded a better understanding of the circumstances around the decisions taken back in 2014.

30 Has AMP identified how many people have delinked from an employer plan and do not have insurance?---As part of the investigation, the total number of members that did not receive insurance under the MySuper defaults has been quantified. And each person that delinked because they didn't have insurance arrangements in place is understood.

35 Is understood?---Yes.

I might just briefly take you to the – to a letter that you wrote to APRA and to ASIC. It's AMP.6000.0288.1331. This is an update on the breach notification that had already been sent?---Yes.

40

And if we go to the second page, 1332, the investigation findings. It says:

45 *Upon investigating the 1600 members initially identified high level analysis and sample testing was conducted which demonstrated that members were not provided default insurance due to conditions set by AMP in offering default insurance –*

?---Yes.

Continuing –

5 ...such as evidence of previously cancelled insurance or low balances.

?---Yes.

10 Does that statement mean that AMP has satisfied itself in respect of each of the 1600 members that it is appropriate that they not have insurance?---AMP is in the process of establishing itself – establishing that fact.

15 Thank you. Has there been any remediation beyond the particular member that we were discussing earlier?---I don't believe there are any other circumstances that we're aware of that – that would require remediation.

20 And save for the fact of this particular member's complaint, is it right that this issue wouldn't have been investigated by AMP?---I – I believe that the members that were actually excluded were – were done so with the business rules that were approved by the trustee at the time. So apart from this one member raising an issue and being investigated, there would be no cause for action on the other members.

25 But you only know that because of the investigation, don't you?---I – well, I know it because those members have actually been excluded as specific criteria.

You know that because of the investigation?---No – well, yes, because of – once the breach lodge – the breach was lodged, that caused the investigation to go back to the original project documentation.

30 Yes?---Which gave rise to the categories that wouldn't be offered insurance. Yes.

So this particular complaint has caused you to have the review that you had?---Yes.

35 And you've satisfied yourself as a consequence of the review?---We're in the process of satisfying ourselves.

How much longer will it take until you have a concluded view on the 1600 members you have identified?---I would think potentially a month or two longer.

40 Commissioner I tender that document.

THE COMMISSIONER: Yes. The previous email I think also needs to be tendered, doesn't it? That's the email of 8 December '17.

45 MR COSTELLO: Yes, thank you.

THE COMMISSIONER: Email to customer advocate, AMP 6000.0287.0165 becomes exhibit 6.248.

5 **EXHIBIT #6.248 EMAIL TO CUSTOMER ADVOCATE DATED 08/12/2017 (6000.0287.0165)**

10 THE COMMISSIONER: The letter then AMP to APRA dated?

MR COSTELLO: The – 10 August.

THE COMMISSIONER: 10 August '18, AMP.6000.0288.1331, exhibit 6.249.

15

EXHIBIT #6.249 LETTER AMP TO APRA DATED 10/08/2018 (AMP.6000.0288.1331)

20 MR COSTELLO: I have no further questions, Commissioner.

THE COMMISSIONER: Thank you. Yes, Mr Hollo.

25 MR HOLLO: I have nothing in re-examination. Thank you.

THE COMMISSIONER: Yes. Thank you very much. You may step down, Mr Sainsbury?---Thank you.

30 Thank you.

<THE WITNESS WITHDREW [11.45 am]

35 THE COMMISSIONER: Yes, Mr Costello.

MR COSTELLO: Commissioner, that ends the group life part of the module and in fact the life insurance part of the module. If we could adjourn briefly to reconstitute.

40 THE COMMISSIONER: If I come back, what, at 10 to?

MR COSTELLO: Thank you, Commissioner.

45 THE COMMISSIONER: Yes.

ADJOURNED [11.45 am]

THE COMMISSIONER: Yes, Ms Orr.

5

MS ORR: Commissioner, we turn now to the second part of these hearings in which we shift our focus to financial services entities that provide general insurance products. Most of the insurance products that Australians deal with on a regular basis, including home, car and travel insurance, are forms of general insurance. As we mentioned in our opening statement last Monday, in the course of this second week of hearings, we will examine issues relating to the way general insurance products are sold, how general insurance products are designed, and how claims are handled under general insurance policies.

10

15 In examining that last issue, the handling of claims under general insurance policies, we will examine the case studies that were deferred from the fourth round of hearings which concern the experiences of people who have made claims under home insurance policies following natural disasters. Then at the end of this week we will draw together some of the themes explored in both weeks of the hearings and consider the regulation of the insurance industry as a whole. In the opening statement last Monday we explained how the general insurance industry is regulated and we summarised the acknowledgements of misconduct and conduct that fell below community standards and expectations made by general insurance companies.

20

25 In this brief further statement, we will provide an overview of the general insurance industry based in part on data that certain general insurance companies have provided to the Commission. We will then summarise what consumers and consumer advocates have told the Commission about their experiences with general insurance. We will also explain what ASIC, the Financial Ombudsman Service, and the General Insurance Code Governance Committee have told the Commission about their compliance roles in relation to general insurance. We will then briefly introduce the case studies to be explored in this part of the hearings.

30

We begin with an overview of the general insurance industry. There are many different types of insurance that are classified as general insurance. These include motor vehicle insurance, home insurance, contents insurance, and insurance for other types of personal property, strata insurance, travel insurance, pet insurance, various types of statutory insurance including compulsory third party motor vehicle insurance, various types of add-on insurance including gap insurance, tyre and rim insurance and the general insurance component of consumer credit insurance, professional indemnity insurance, other types of liability insurance and business interruption insurance. Some types of general insurance are directed towards businesses, and others are sold to consumers.

40

45 In these hearings we will focus on general insurance products that are sold to consumers, in particular, home insurance, travel insurance and add-on insurance. In the last financial year, the top five consumer-oriented general insurers in Australia by

total gross earned premium were AAI, which trades as Suncorp Insurance, Insurance Australia Limited which is part of the Insurance Australia Group or IAG, QBE Insurance, Allianz, and Insurance Manufacturers of Australia which is a joint venture between IAG and RACV. In preparation for this round of hearings, the Commission
5 sought witness statements from AAI, IAG, QBE, Allianz, and Youi, and from the three major banks that have general insurance businesses, CBA, ANZ and Westpac.

In those statements we asked the insurers to tell the commission about how they design general insurance products, how they sell and promote general insurance
10 products, how they handle claims under general insurance policies, and how they remunerate the personnel involved in selling general insurance products and handling general insurance claims. At the end of this opening statement, we will tender those statements. We note that the different insurers recorded or accounted for the information that the Commission asked about in different ways. This means that
15 there were differences in the ways that the sales of policies and the handling of claims in respect of those policies were reported across the different statements. The relevant differences are explained in detail in the insurers' statements.

We deal first with what those statements indicated about how Australians buy
20 general insurance. We asked the eight insurance companies about the ways they sell and promote their products. In Australia general insurance products are sold in two ways: directly to the customer by the insurer, including online, by telephone, or face-to-face, such as in branches operated by the insurer, or through an intermediary, including a financial institution, a car dealer, an underwriting agency, or an insurance
25 broker. Where general insurance is sold directly to the customer, or through an intermediary other than an insurance broker, it is generally sold with no financial advice or with general advice only, that is, with advice that does not take into account the personal circumstances of the customer.

When general insurance is sold through an insurance broker, it is generally sold with
30 personal financial advice. We have referred in previous rounds of hearings and last week in respect of life insurance to the prohibitions on conflicted remuneration contained in part 7 of the Corporations Act. General insurance is, and always has been, excluded from the conflicted remuneration provisions of part 7. This means
35 that there is no limit on the amount that general insurance companies can pay in commissions in relation to the sale of general insurance products. As you will hear in the course of this week, the exclusion of general insurance from the ban on conflicted remuneration has led to what ASIC has termed reverse competition in relation to the sale of add-on insurance products through intermediaries like car
40 dealers, where insurers compete on the price paid to car dealers in commissions to buy access to distribution channels instead of competing on price or value of products offered to consumers.

In the financial years from 2013 to '15, ASIC found that insurers paid more than
45 \$600 million in upfront commissions to car yard intermediaries for the sale of add-on insurance products. In the same period, the insurers collected \$1.6 billion in premiums from those products, and paid out only \$144 million in claims. These

products are generally sold with no financial advice or general advice only. Separately to monetary benefits provided to intermediaries such as car dealers who generally don't provide personal advice, we asked the eight general insurance companies to provide information about monetary benefits that they provide to
5 Australian financial services licence holders or authorised representatives of AFSL holders in circumstances where an employee or authorised representative of the entity might be expected to provide personal financial advice in relation to general insurance products.

10 Examples of the types of monetary benefits provided include standard commissions, calculated as a percentage of insurance premiums written, as well as profit share payments, additional commissions, and volume-based incentives. In the period from 1 July 2013 to 30 June this year, Allianz told the Commission that it paid more than \$240 million in commissions to entities that might be expected to provide financial
15 advice in relation to general insurance products. IAG told the Commission that it paid more than \$500 million in commissions to these entities. QBE told the Commission that it paid more than \$800 million in commission to these entities. Those figures are in addition to the amounts paid in commission to intermediaries who sold general insurance products with no advice or general advice only.

20 We turn to who within the eight insurers Australians tended to buy general insurance from. In relation to motor vehicle insurance and home and contents insurance, IAG and AAI sold significantly more policies than the other insurers in the last financial year. They also received the highest amount of premiums for those policies last year.
25 In relation to travel insurance, only four of the insurers who provided witness statements reported having sold travel insurance during the last financial year. Of those, Allianz and QBE sold the most travel insurance policies and received the most premiums for those policies. QBE announced its decision to exit the travel insurance market in August this year.

30 We turn to the handling of claims in the general insurance industry. The insurers told the Commission that a person who makes a claim under a general insurance policy usually lodges that claim via a telephone call or online, setting out certain information about the claim. Once the relevant information has been gathered by the
35 insurer about the claim, the claim is assessed against the policy terms. There are many different reasons why an insurer might decide to deny a general insurance claim. We asked the general insurers to provide us with information about the most common reasons why they denied general insurance claims in respect of each of the types of product.

40 These reasons included, for motor vehicle insurance claims, because a specific exclusion in the wording of the policy prevented the claim being covered, such as where the claimed damage was found to result from lack of maintenance rather than being caused by an accident, because of non-disclosure by the claimant at the time of
45 purchasing the policy, or because the customer did not meet a condition of the policy which related to the specific circumstances of the claim. For home and contents insurance claims, claims were commonly denied because there was no coverage for

the particular claimed event or item under the policy, or because a specific exclusion or exception in the wording of the policy prevented the claim from being covered, such as where the damage was found to be caused by wear and tear rather than by the claimed event.

5

For travel insurance claims, claims were commonly denied because there was no coverage for the claimed event or item under the policy, because a specific exclusion or exception in the policy prevented the claim being covered, or because the customer was unable to prove loss or ownership of the claimed item. Could we please show document RCD.0026.0003.0001. Now, the chart on the left shows the percentage of declined claims as a proportion of all claims received by the eight insurers, for each policy type for the last financial year. And as we can see from that chart, claims made under travel insurance policies are declined the most frequently, with more than one in every 10 claims declined.

10

15

Motor vehicle claims and home and contents claims were declined in full at a rate of .27 per cent and 5.77 per cent respectively. The chart on the right shows the average or mean claim resolution time by policy type, being the number of calendar days that elapse between the date of receipt of the claim form by the insurer and the date on which the claim was closed by the insurer. We focused on the date on which the claim was closed for two reasons: first, because several of the insurers told us their systems did not record the decision date for the claim, and second, because a decision about the claim may have been made within days of receipt, but the time taken to resolve the claim was significantly longer.

20

25

As we will see in the case studies in relation to natural disasters later this week, many of the problems associated with the handling of general insurance claims can arise after a decision about the claim has been made. As we can see from the chart on the right, claims are closed most quickly in relation to travel insurance claims, averaging approximately 41.18 days after receipt of the claim. Claims made under motor vehicle and home and contents policies take significantly longer to resolve and are closed at approximately 64 and 65 days respectively. Commissioner, I tender this document.

30

35

THE COMMISSIONER: Chart showing percentage claims to client by product type and days to resolve claims for period 1 July '17 to 30 June '18, RCD.0026.0003.0001, exhibit 6.250.

40

EXHIBIT #6.250 CHART SHOWING PERCENTAGE CLAIMS TO CLIENT BY PRODUCT TYPE AND DAYS TO RESOLVE CLAIMS FOR PERIOD 1 JULY '17 TO 30 JUNE '18 (RCD.0026.0003.0001)

45

MS ORR: And I tender the witness statements that set out the information I've referred to. In relation to AAI, I tender the witness statement of Gary Dransfield dated 31 August 2018.

THE COMMISSIONER: Exhibit 6.251.

5 **EXHIBIT #6.251 STATEMENT OF GARY DRANSFIELD DATED 31/08/2107**

MS ORR: In relation to Allianz, I tender the witness statement of Michael Winter, dated 30 August 2018.

10 THE COMMISSIONER: Exhibit 6.252.

EXHIBIT #6.252 STATEMENT OF MICHAEL WINTER DATED 30/08/2018

15 MS ORR: And the witness statement of David Krawitz dated 30 August 2018.

THE COMMISSIONER: Exhibit 6.253.

20 **EXHIBIT #6.253 STATEMENT OF DAVID KRAWITZ DATED 30/08/2018**

25 MS ORR: In relation to IAG, I tender the witness statement of Mark Milliner dated 30 August 2018.

THE COMMISSIONER: Exhibit 6.254.

30 **EXHIBIT #6.254 STATEMENT OF MARK MILLINER DATED 30/08/2018**

MS ORR: In relation to CBA I tender the witness statement of Miles Sowden dated 30 August 2018.

35 THE COMMISSIONER: Exhibit 6.255.

40 **EXHIBIT #6.255 STATEMENT OF MILES SOWDEN DATED 30/08/2018**

MS ORR: The witness statement of Sinead Taylor dated 30 August 2018.

45 THE COMMISSIONER: Exhibit 6.256.

EXHIBIT #6.256 STATEMENT OF SINEAD TAYLOR DATED 30/08/2018

MS ORR: And the witness statement of Gareth Russell, dated 30 August 2018.

THE COMMISSIONER: Exhibit 6.257.

5

EXHIBIT #6.257 STATEMENT OF GARETH RUSSELL DATED 30/08/2018

10 MS ORR: In relation to QBE, I tender the witness statement of Christopher Kalori dated 30 August 2018.

THE COMMISSIONER: Exhibit 6.258.

15 **EXHIBIT #6.258 STATEMENT OF CHRISTOPHER KALORI DATED 30/08/2018**

20 MS ORR: In relation to ANZ, I tender the witness statement of David Roberts, dated 30 August 2018.

THE COMMISSIONER: Exhibit 6.259.

25 **EXHIBIT #6.259 STATEMENT OF DAVID ROBERTS DATED 30/08/2018**

MS ORR: In relation to Westpac, I tender the witness statement of Susan Houghton dated 30 August 2018.

30

THE COMMISSIONER: Exhibit 6.260.

35 **EXHIBIT #6.260 STATEMENT OF SUSAN HOUGHTON DATED 30/08/2018**

35

MS ORR: And in relation to Youi, I tender the witness statement of Bert Bakker dated 30 August 2018.

40 THE COMMISSIONER: Exhibit 6.261.

EXHIBIT #6.261 STATEMENT OF BERT BAKKER DATED 30/08/2018

45

MS ORR: We turn to what the Commission has heard from consumers, consumer representatives, the Financial Ombudsman Service and the General Insurance Code

Compliance Committee about consumer experiences in relation to general insurance. Of the 8977 public submissions received by the Commission to 14 September this year, 620 were identified as relating to general insurance. Of these, the three most common types of general insurance policies referred to were home and contents insurance, car insurance, and travel insurance. The most common issues raised in the public submissions concerned claims handling processes. Many submissions referred to delays in handling insurance claims and refusals to pay out on insurance policies.

10 A number of submissions emphasised the impact that ongoing delays in processing claims and undertaking repair work had on the consumer, particularly where the repairs affected their ability to live in their home. There were also a number of submissions relating to the third parties engaged to undertake repairs under an insurance policy. A number of submissions complained of the selective use by insurers of assessors or reports from professionals. Concerns were also raised about insurers requiring that particular service providers be engaged to undertake repairs which in some cases extended delays or affected the quality of the repairs.

20 A number of the public submissions related to the handling of insurance claims following natural disasters. Many of these submissions raised similar claims handling concerns. In some cases, the delays in claims handling meant that individuals had to move into temporary or alternative accommodation for long periods of time following a natural disaster. In a number of cases, independent structural engineering reports obtained by the customer contradicted the assessment relied on by the insurer. Some submissions also referred to pressure from insurers for policyholders to accept cash settlement payments which did not reflect the true cost of the damage or were substantially below the claim amount and which left organisation of repairs within the settlement amount to the consumer.

30 The Commission also received a number of submissions relating to travel insurance. The most common concerns in relation to travel insurance related to the treatment of pre-existing conditions, including charging high premiums to cover such conditions or a denial of claims on this basis. The Commission also received submissions from consumer organisations and met with them in preparation for the hearings. We make the following observations about the concerns that they raised. First, a number of the bodies raised concerns in relation to the disclosure of policy terms. CHOICE noted that long and complex terms and conditions in the product disclosure statements for insurance policies often result in consumers facing loopholes or exceptions that mean they don't receive the support that they expected from their insurance policy when they make a claim.

45 CHOICE pointed to non-standard definitions as one contributor to a lack of understanding on the part of consumers about what they are covered for. The Financial Rights Legal Centre told the Commission that it commonly hears consumers complaining that they have been caught by the fine print of their insurance policies. It considers that disclosure documents are overly complex, long and ineffective in empowering consumers to make informed choices at the point of

sale, and that rather than promoting consumer understanding, disclosures allow insurers to manage their liability and reduce claims' outcomes.

5 Second, a number of consumer organisations raised concerns with sales practices for general insurance. The Financial Rights Legal Centre and the Consumer Action Law
Centre both told the Commission that general insurance sold under a no advice or
10 general advice model results in the widespread selling of insurance that is unsuitable for the people buying it. Consumer action considers that this leads to poor outcomes for consumers who are provided with insufficient or inadequate information to
inform their decision or to engage with the complexities of the products. The
15 Financial Rights Legal Centre also told the Commission that this model leads to significant under-insurance as consumers are not fully informed about the limitations of their cover.

15 Claims handling was also a common concern raised by the consumer bodies. Consumer Action said that many consumers are discouraged from making claims in the first place because of a fear that the claim would lead to an increased premium. It also said that the two-stage internal dispute resolution processes adopted by
20 general insurers can deter people from pursuing legitimate complaints as the complaint process is seen as laborious. A number of consumer organisations raised concerns with the sale of add-on insurance. Insurance sold under these models is generally sold through distributors, such as banks, car dealerships, retailers and airlines who generally receive commissions and other incentives from insurers.

25 Consumer Action told the Commission that these products are often expensive compared to insurance bought directly from an insurer, and that they are often low value. The Financial Rights Legal Centre also pointed to the selling practices for these products including keeping consumers captive until after a sales pitch is completed, using the cooling off period as a selling point, deliberately masking the
30 cost of insurance in loan payments, and serious deficiencies in scripts used for sale of consumer credit insurance products. Add-on insurance sold through car yards will be the subject of a case study this week.

35 The Commission has also heard from representatives of bodies that assist consumers in dealing with insurance companies in the wake of natural disasters and severe weather events. These have included representatives of legal aid bodies from a number of states, as well as the Financial Rights Legal Centre. Later this week we will summarise statements we received from Legal Aid New South Wales and Legal
40 Aid Queensland in relation to the experience of their clients in relation to natural disasters. The submission from the Financial Rights Legal Centre raised issues relating to the price of premiums for flood coverage. It expressed concern that events similar to the floods in 2011 are likely to occur again with significant numbers of properties uninsured for flood as a result of customers being unable to afford appropriate cover, being refused cover, or opting out of cover without appreciating
45 the full extent of their risk.

ASIC told the Commission about enforcement action that it has taken in relation to the general insurance industry. ASIC told the Commission that it has taken action on 31 occasions since 1 January 2008 that it described as enforcement action against general insurers. The action consisted of the following: first, ASIC issued three sets
5 of infringement notices in respect of misleading advertising of insurance products. The first set comprising four notices was issued to RAA Insurance Limited for misleading television advertising about a motor vehicle insurance policy. RAA paid \$43,200 in penalties under the four infringement notices.

10 The two remaining sets of infringement notices were issued to AAI. The first set comprising two notices related to false or misleading advertising relating to car insurance for which AAI paid \$20,400 in penalties. The second set comprising four notices related to false or misleading statements promoting its home building insurance complete replacement cover product, which resulted in the payment of
15 \$43,200 in penalties. The conduct that led to this second set of infringement notices to AAI will be the subject of a case study in this week of hearings.

Second, ASIC imposed additional conditions on the licence of two insurers, Hallmark Insurance which is GE Money and Virginia Surety Company, Inc. Third,
20 in 2016 ASIC accepted an enforceable undertaking from Ace Insurance Limited in relation to the misconduct of sales people who had made misleading statements to consumers and sold unsuitable insurance policies. The enforceable undertaking required Ace to appoint an independent expert to review its compliance systems, implement a remediation plan to compensate affected consumers, and make a
25 donation of \$1 million to financial counselling and financial literacy initiatives.

Fourth, ASIC requested remedial action from general insurers on 25 occasions, which included 12 customer remediation programs. We provide some examples of those programs. In 2016, following concerns raised by ASIC, Optus Insurance
30 Services agreed to refund approximately \$2.4 million to around 175,000 Optus mobile customers for its failure to provide customers with product disclosure statements and financial services guides. Five of the customer remediation programs relate to add-on insurance products sold through car dealerships. In the case of each insurer, the add-on insurance products being remediated offered little or no benefit or
35 were of low or no value.

The five insurers were Virginia Surety Company, Inc who is to refund over \$330,000 to more than 500 consumers, QBE, who will refund up to \$15.9 million to more than 35,000 consumers, Swann Insurance, a subsidiary of IAG who will offer to refund
40 \$39 million to 67,960 consumers, Allianz, who will refund \$45.6 million to 68,000 customers, and Suncorp, who will refund \$17.2 million to 41,428 customers. Collectively, the amounts being remediated for the sale of add-on insurance through car dealerships are in excess of \$118 million. As we've already mentioned, add-on insurance sold through car dealerships will be the subject of a case study this week.
45

We turn to what the Financial Ombudsman Service told the Commission about its role in handling disputes related to general insurance. FOS reported an increase in

the number of general insurance disputes it received in the 2016 to '17 year, up by 2612 disputes on the previous year, or approximately 38 per cent. FOS accepted 8756 general insurance disputes in 2016 to '17, accounting for approximately 35 per cent of all disputes accepted by FOS. FOS reported that the increase in general insurance disputes has been due to a continuation of industry specific issues, including higher claim numbers, organisational changes, and the impact of Tropical Cyclone Debbie.

FOS told the Commission that the periods with the highest number of accepted disputes have been linked to the occurrence of natural disasters, particularly during 2010 and 2011. The main issue in these disputes was confusion over the extent of cover due to the various definitions of flood and storm. We turn to the Code Governance Committee. The Code Governance Committee or CGC is an independent body that monitors and enforces insurers' compliance with the general industry Code of Practice. It's comprised of a consumer representative, an industry representative, and an independent chair. The CGC outsources its day-to-day code compliance monitoring work to the FOS code compliance team.

The CGC reported that subscriber's data revealed increased claims activity in 2016 to '17. This was attributed in part to the greater impact of catastrophes in that year. Several code subscribers reported to the CGC that severe and extreme weather events contributed to growth in both claims and declined claims, including in relation to home insurance. Although the Insurance Council of Australia declared only five catastrophes in 2016 to '17, the same number as in the previous year, the CGC reported that their impact was far greater.

As a result, consumers lodged around 182,565 catastrophe-related claims in 2016-17, a sharp increase from the approximately 41,000 claims the previous year. Total estimated losses were approximately \$2.76 billion. Finally, Commissioner, we make some brief observations about the case studies which will be examined for the remainder of these hearings. The issues to be explored this week include internal compliance processes for insurers, the sale of add-on insurance products, and issues associated with claims under home insurance policies following natural disasters. The first case study concerns incorrect and misleading statements made by Allianz in relation to its travel insurance products and the compliance processes within Allianz. These issues will be explored through two witnesses, Mr Michael Winter, the chief general manager of retail distribution, and Ms Lori Callahan, the chief risk officer.

The second case study will consider the sale of add-on insurance products. The Commission will hear from Mr Benjamin Bessell from Insurance Australia Group or IAG about the provision of add-on insurance products sold through car dealerships. The next three case studies all relate to the conduct of insurers in handling claims made under home insurance policies after natural disasters. The first also relates to the conduct of AAI in advertising its home insurance policies. Issues with that conduct came to light as part of an investigation into Suncorp's handling of insurance claims arising from the bush fires near Wye River in Victoria in 2015.

The Commission will hear evidence in this case study from Mr Gary Dransfield, the chief executive officer insurance for the Suncorp Group. The second of these case studies relates to the conduct of Youi in connection with insurance claims arising from damage to homes caused by two natural disasters, Tropical Cyclone Debbie
5 which hit Queensland in March 2017, and the severe hail storm that struck Broken Hill in November 2016. The Commission will hear evidence from two consumers who made claims with Youi following damage to their homes, and from Mr Jason Storey, the chief operating officer, claim services at Youi.

10 The third of these case studies relates to the conduct of AAI in connection with an insurance claim arising from damage to a home caused by flooding in the Hunter Valley in April 2015. The Commission will hear evidence from a consumer and will hear further evidence from Mr Dransfield the chief executive officer insurance for the Suncorp Group. The final issue that we will consider in this sixth round of
15 hearings is the regulation of the insurance industry. The Commission will hear evidence from the peak representative bodies for general and life insurers, from Mr Robert Whelan, CEO of the Insurance Council of Australia and Ms Sally Loane, CEO of the Financial Services Council.

20 Commissioner, that concludes the opening remarks in relation to the general insurance part of these hearings. The first witness is Michael Winter of Allianz.

THE COMMISSIONER: Yes. Mr Winter, would you be good enough to come into the witness box.
25

<MICHAEL DEAN WINTER, SWORN

[12.29 pm]

30 <EXAMINATION-IN-CHIEF BY MR LOCKHART

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

35

MR LOCKHART: Mr Winter, is your full name Michael Dean Winter?---Yes.

And is your business address 2 Margaret Street, Sydney?---Yes.

40 Is your current position chief general manager of retail distribution of Allianz Australia Limited?---Yes.

And you're here to give evidence in response to a summons issued to you. Is that correct?---Yes.

45

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

I tender that.

THE COMMISSIONER: Exhibit 6.262, the summons to Mr Winter.

5

EXHIBIT #6.262 SUMMONS TO MR WINTER

MR LOCKHART: Mr Winter, in respect of Rubric 6-63, you've made a statement.
10 Is that correct?---Yes.

And is that statement dated 24 August 2018?---Yes.

15 Are the contents of that statement true and correct to the best of your knowledge and belief?---Yes.

Commissioner, I tender that statement and the exhibit accompanying the statement.

20 THE COMMISSIONER: Statement of Mr Winter in relation to Rubric 6-63 of 24 August '18, together with its exhibits, becomes exhibit 6.263.

25 **EXHIBIT #6.263 STATEMENT AND EXHIBITS OF MR WINTER IN
RELATION TO RUBRIC 6-63 DATED 24/08/2018**

MR LOCKHART: Thank you, Commissioner.

30 THE COMMISSIONER: Thank you. Ms Orr.

<CROSS-EXAMINATION BY MS ORR **[12.31 pm]**

35 MS ORR: Mr Winter, you've been the chief general manager of retail distribution for Allianz Australia limited since September 2014?---Yes.

And Allianz Australia Limited owns Allianz Australia Insurance Limited?---Yes.

40 And that company, Allianz Australia Insurance Limited issues general insurance products?---Yes.

Including home insurance?---Yes.

45 Motor vehicle insurance?---Yes.

Travel insurance?---Yes.

Now, you're responsible for the division of Allianz's insurance business which distributes insurance products through call centres, financial institutions, and motor dealers. Is that right?---That's right.

5 And online?---Yes.

And you've worked in various roles at Allianz since 2001?---Yes.

10 You've been put forward by Allianz to give evidence about its travel insurance?---Yes.

And about incorrect and misleading content on Allianz's website?---Yes.

15 Before I come to that incorrect and misleading content, I want to take a bit of time to understand the way that Allianz sells travel insurance. Allianz has a significant share of the market for travel insurance in Australia?---Yes.

20 It had 24 per cent of that market in 2013 to '14, you tell us in paragraph 16 of your statement?---Yes.

And you estimate that it had 25 per cent of that market in 2017 to '18?---Yes.

25 And over the last five years, the number of travel insurance policies that Allianz has sold has decreased?---Yes.

From about 1.5 million policies in the 2014 financial year to about 770,000 policies in the 2018 financial year?---Yes.

30 But over that same period, the amounts of premiums paid for travel insurance policies issued by Allianz has increased?---Yes.

From about 189 million to about 257 million?---Yes.

35 Why is that, Mr Winter?---More the nature or the type of product changed during that period. So in 2015-16 there's a product that is embedded in a credit card supplied by banks. So they're done as a master policy, but they cover multiple consumers. So you will see in the data the number of policies whilst under that particular line is small, it's covering a large number of customers through the credit card base.

40 So the premiums have then increased because you have group credit card business - - -?---Correct.

45 - - - with two financial institutions. Is that right?---There were - to be clear, there were two new financial institutions - - -

Thank you?--- - - - during that time.

Thank you?---But there are – I think there are three to four in total.

I see. So that skews the number of policies because it's a single group policy that covers all of the people who have travel insurance under their credit cards with that
5 financial institution. Is that right?---Yes.

Now, do you agree that it is becoming increasingly common for people to access travel insurance through their credit cards?---Yes.

10 And is the travel insurance that's available through a credit card the same as the travel insurance that's available through other channels?---No.

What's different about it?---Typically, it will provide a level of cover that would be less than would be available if it was a fully underwritten product. So by that I mean
15 with it being automatically included it's not rated for somebody's individual circumstances. So in – in that effect, the cover is typically more of an essential or basic cover than what might be available under a personal product.

Okay. So the level of cover tends to be less under insurance – travel insurance held
20 under credit cards?---Yes, that's my understanding.

Is that right? And does credit card travel insurance usually also exclude cover for pre-existing medical conditions?---Yes, that's my understanding.

25 Okay. So the coverage that a consumer gets under their travel insurance policy under their credit card is likely to be inferior to the travel insurance cover that they could get through another means, not as a group credit card policy?---Typically, yes. I would like to point out in one arrangement there is a facility for customers to apply for pre-existing condition cover.
30

I see. With one of the financial institutions that you provide travel insurance through?---Yes.

Okay. Now, apart from group travel insurance policies sold to the financial
35 institutions to provide to customers through credit cards, what are the other ways that Allianz sells travel insurance?---On a direct basis through the Allianz website and through AWP which is an underwriting agency through their direct relationships, through travel agents, and through what's known as an integrated pathway, where the travel cover will be included in the purchase path of another – like if someone's
40 buying travel online, the travel insurance will be included as part of that purchase path. We refer to it in our – in my witness statement as integrated.

So that's a purchase path that consumers can use when they go to a website, for example, of an airline. Is that right?---Yes.
45

Or a website of a travel agency?---Yes.

Okay. And does Allianz also sell travel insurance directly through banks and credit unions?---Yes.

And also through mortgage brokers?---Yes.

5

Now, you referred to AWP in that answer as an underwriting agency. Can you explain what you mean by an underwriting agency?---So AWP has authority under our licence with respect to travel insurance to operate and issue travel. So in that respect, they manage pricing and claims directly.

10

They manage pricing and claims directly?---Yes.

On behalf of Allianz?---Yes.

15 Now, AWP trades under the brand Allianz Worldwide Partners. Is that right?---Yes.

And Allianz doesn't own AWP. Is that right?---Yes.

20 But AWP and Allianz are both ultimately owned by a German company called Allianz SE?---Yes.

Now, the relationship between Allianz and AWP is governed by an underwriting agency agreement. Is that right?---Yes.

25 And the current version of that agreement was entered into in July this year?---Yes.

And you've exhibited that agreement to your statement. Before that, the relationship was governed by a similar agreement that was entered into in December 2010?---Yes.

30

Now, you've also exhibited that agreement to your statement, the earlier agreement?---Yes.

35 Now, I want to understand the relationship between the two companies, Allianz and AWP in a bit more detail, and because most of the events I want to ask you about happened before July this year, I want to take you to the December 2010 version of the agreement between Allianz and AWP. Do you understand?---Yes.

40 And that's exhibit 2 to your witness statement, ALZ.0001.0077.0828. Now, if we turn to 0830 within this document, we see that it's an agreement between Allianz and a company called ETI Australia Proprietary Limited. Do you see that, Mr Winter?---Yes.

45 Now, ETI later changed its name to AGA Assistance Australia Proprietary Limited?---Yes.

And AGA Assistance Australia Proprietary Limited changed its name to AWP?---Yes.

5 So ETA, AGA and AWP are all the same company?---ETI, AWP - - -

I'm sorry, ETI?---Yes.

10 Get my acronyms right, ETI, AGA and AWP are all the same company which started being known as ETI and is now known as AWP?---Yes.

So when we see references in these documents, I'm just going to refer to AWP, even when there's a reference to ETI or AGA?---Yes.

15 Is that clear? Now, we can see from the recitals in this agreement that both Allianz and AWP hold Australian financial services licences?---Yes.

And Allianz is also authorised, we see from the recital, to issue general insurance products?---Yes.

20 But AWP is not?---No.

All right. And if we go to 0835 in this agreement, we see that under clause 4.1:

25 *Allianz authorises AWP to develop policy wordings and product disclosure statements.*

Do you see that?---Yes.

30 To determine the premiums for the products?---Yes.

To market the products?---Yes.

And to administer and coordinate services in relation to the products?---Yes.

35 And then at 0836, over the page, we see that under clause 5.4, AWP collects the premiums in respect of the policies?---Yes.

And it pays a percentage of those premiums to Allianz?---Yes.

40 And at 0837 in clause 5.8, we see that AWP is authorised to handle all claims under the policies?---Yes.

45 Now, this agreement provided – sorry, applied to travel insurance products and some related products. Is that right?---Yes.

So Allianz is formally responsible for issuing the travel insurance policies?---Yes.

But AWP makes decisions about the policy features?---Yes.

And the policy documentation?---Yes.

5 And acts as Allianz's agent in handling applications for the policies?---Yes.

It markets the policies?---Yes.

And it manages the claims that are made under them?---Yes.

10

Now, I want to focus on the sale and marketing of travel insurance policies by AWP. AWP sells travel insurance policies through a number of channels. Is that right?---Yes.

15 They sell them through their own website?---Yes.

That's different to the Allianz website?---Yes.

They also have a call centre?---Yes.

20

And they sell them through travel agencies and financial institutions?---Yes.

They sell them through the websites of third parties, again, like airlines or travel sites?---Yes.

25

Through credit cards?---Yes.

And again through insurance brokers?---Yes.

30 Now, you tell us in your statement that the majority of the travel insurance policies sold by AWP are sold through the websites of third parties like airlines or travel sites?---Yes.

And Allianz refers to these third parties as partners?---Yes.

35

Now, I want to understand the relationship between Allianz, AWP, and the partners. There's an agreement between AWP and the partner?---Yes.

Is there a standard form of agreement?---I can't be sure but I would expect so.

40

And the partner agrees to distribute the travel insurance product through its website?---Yes.

And it receives a commission for sales of travel insurance policies?---Yes.

45

And AWP manages the relationship with the partner. Is that right?---That's right.

And AWP handles the claims and collects the premiums but the insurance is still formally issued by Allianz?---Yes.

5 So just to be clear, a person can buy travel insurance issued by Allianz on Allianz's own website?---Yes.

On AWP's own website?---Yes.

10 And on the websites of Allianz's partners which include airlines and travel entities?---Yes.

Roughly how many partner websites are there?---I don't know the specific number, sorry.

15 Can you approximate the numbers, Mr Winter?---I believe it's in the order of 70.

In the order of 70. And who's responsible for the content of each of those partner websites?---AWP.

20 Who proposes what the website will say about Allianz travel insurance policies?---AWP.

And who's responsible for checking that it complies with the law?---Allianz.

25 Now, in your statement you've distinguished between a website and a purchase path. Can you explain the difference between those two things?---Yes, a customer buying travel insurance, the first page they land on in a website, we would refer to that as the landing page. If they then select to buy a policy or get a quote on a policy, we would refer to that as the purchase path because it actually takes them off the – the landing
30 page content and begins the – the process of buying and quoting travel insurance.

Are there as many purchase paths as there are websites?---No.

35 Are there less?---Significantly less.

And who's responsible for the content on the purchase paths?---AWP.

Okay. Now, it's AWP who proposes what the purchase path will say?---Yes.

40 And who's responsible for checking that the content on the purchase path complies with the law?---Allianz.

45 Now, have the arrangements about responsibility for the websites and the purchase paths been the same since 2015?---They've changed under the new agreement that you mentioned earlier from July of this year. To be clear, though, there has always been a process of review between both organisations and final approval from Allianz for that content on both the website and the purchase path.

Now, I want to turn to the issue of the incorrect or misleading content on the Allianz website which I mentioned earlier. In 2015, Allianz decided to update its website?---Yes.

5 You tell us in your statement that it wanted to improve the look and feel of the website?---Yes.

10 So most of the content on the website was to remain the same because the update was about changing imagery, introducing navigation bars and changing the layout and design of the website?---Yes, but there was also content change as part of that as well.

There was some new content that was proposed too?---Yes.

15 Now, Allianz has a process for approving new documents, marketing materials and website pages?---Yes.

20 And that's called the document compliance sign-off process or the DCSO process?---Yes.

And that process requires that any proposed new document including a new web page go through a legal review. Is that right?---Yes.

25 And also a review by various non-legal departments?---Yes.

And that process was followed in relation to the new content for the updated website in 2015?---Yes.

30 And the new content was approved on 27 November 2015?---Yes.

But the DCSO process was not used to check the new content when it was placed in the context of the updated website. Is that right?---Yes.

35 So the DCSO process wasn't used to review the website as it would look when it was made accessible to the public?---Yes.

Why not?---I think it's a failure in the approach. The content should always be reviewed in terms of how it will be presented to the customer.

40 Allianz went ahead and launched the updated website on 10 December 2015?---Yes.

Was there any review of the updated website as a whole as it would look to the consumer before it went live?---No.

45 I want to take you to some emails from the night before – from the night that the website went live. Could I ask that you be shown ALZ.0001.0111.0006. Now, the first email in the chain is at the end of the document, 0008. We see at 0008 that at

3.27 pm on 10 December 2015 Jarrod Miller sent an email to a number of other people at Allianz. And we see that Mr Miller was the digital B2C manager. What does that mean?---B2C is business to consumer, so another word for direct.

5 Now, Mr Miller said:

10 *Colleagues, just a short note to let you all know that website refresh goes live this evening from 9 pm. We are currently going through some of the final stages of testing in the staging environment to flush out any issues. So far, I'm happy to announce that we have only discovered a few images that are currently being migrated.*

Do you see that?---Yes.

15 Now, we see from that email that on the day of the website launch there was some testing in the staging environment. And it only picked up issues with, as Mr Miller describes it, a few images?---Yes.

20 Then if we bring up 0006 and 0007, we see that the next email in the chain, which begins at the bottom of 0006 and goes over to 0007, was sent about two and a half hours later at 6.03 pm that day. Do you see that?---Yes.

25 So that was about three hours before the website was to go live at 9 o'clock that night?---Yes.

Now, this email is from Iona Luke, a corporate solicitor at Allianz?---Yes.

And she said:

30 *Jarrod and I have completed a final review of the website in the staging environment.*

Do you see that at the top of the second page?---Yes.

35 Is and in the final two paragraphs, she said:

40 *I note that product feature disclaimers and discount disclaimers are placed in a collapsible box at the bottom of each page with an asterisk tagged throughout the body of the web page to those products or discounts that need a disclaimer all using the same symbol. This approach carries the risk of not being sufficiently clear in which disclaimer applies to which product feature or discount, especially when multiple disclaimers apply to a particular feature or discount such as a no claim bonus which needs two disclaimers, the NCB disclaimer and the minimum premium disclaimer. We would argue that the bold disclaimer headings assist customers in finding the relevant disclaimers but a regulator could take a different view. You need to be comfortable with accepting this risk.*

45

She then says:

5 *Corporations Act disclosures are not conditions, they are legal disclosures. I have therefore asked for those to be moved outside of the conditions apply box. Similarly citations are not conditions. I have also asked for those to be moved outside of the conditions apply box.*

Now, then we see also on 0006 that on 18 December 2015 more than a week after the website went live, Ms Luke sent another email. Do you see that?---Yes.

10

She said:

15 *We've had a quick look at the site to sample a few pages just now and note the following. The Corporations Act disclosures are nowhere to be found. When we looked through the staging environment we moved those outside of the collapsible conditions apply box. Jarrod, can you please reinstate these as soon as possible. Some of the symbols throughout the page indicating disclaimers do not link back to the conditions apply box.*

20 *Given the product and discount disclaimers are within the collapsible conditions apply box and the symbols throughout the page do not clearly show there is a condition in the conditions apply box which applies, the risk is that ASIC could consider this is not clear disclosure. I note this was discussed in our review of the test site. The risk is particularly high in relation to no claim bonus disclaimers, minimum premium disclaimers and price representations. Patrick and Nadine, can you please confirm the following: you are happy with accepting the risk of how the product and disclaimer discounts are represented, whether you want us to do a full review of every page of the live website to ensure consistency, given that we had not been given the time to reconcile all new and old content.*

30

So we see from this email, Mr Winter, that the issues that Ms Luke identified three hours before the website went live were not dealt with?---Yes.

35 And you summarise the problems that were detected at this stage in your statement. They were that symbols used to indicate a disclosure didn't adequately link back to the conditions apply which contained the disclosure?---Yes.

40 The full disclaimer wording was only viewable by clicking on a conditions apply box?---Yes.

And some Corporations Act disclosures were absent?---Yes.

45 Now, the website was accessible to the public for more than a week before these issues were identified?---Yes.

But after they were identified, did Allianz take down the offending parts of the website?---No.

5 Did Allianz revert to the previous version of the website until the issues could be fixed?---No.

Why not, Mr Winter?---The previous version of the website gets superseded by the uploaded new content. So it's not – we're not capable of doing that in practice.

10 What about taking down the offending parts of the website?---It wasn't considered appropriate at the time.

It wasn't considered appropriate at the time?---Mmm.

15 Why not, Mr Winter?---I – I think we were going to deal with the issues that had been identified and rectify them.

You were going to deal with the issues and rectify them?---Yes.

20 But in the meantime, the website remained up and accessible to the public in this form?---Yes.

Now, we see in this email that Ms Luke sought confirmation of some matters from Patrick and Nadine?---Yes.

25 That was Patrick Brownsberger and Nadine Whitaker?---Yes.

Who were they?---Patrick was – he works in the direct business. He's head of new business in direct. And Nadine Whitaker at that time was head of life.

30 Head of life?---Life. As a product manager role in life.

All right. I tender the email chain, Commissioner.

35 THE COMMISSIONER: Emails of Allianz Australia Insurance, 10 December '15 to 18 December '15 concerning website refresh, ALZ.001.0111.0006, exhibit 6.264.

40 **EXHIBIT #6.264 EMAILS OF ALLIANZ AUSTRALIA INSURANCE, 10 DECEMBER '15 TO 18 DECEMBER '15 CONCERNING WEBSITE REFRESH (ALZ.001.0111.0006)**

45 MS ORR: If that's a convenient time, Commissioner.

THE COMMISSIONER: Yes. If we come back at 2 o'clock.

MS ORR: Thank you, Commissioner.

THE COMMISSIONER: If you would be good enough to come back in time to begin at 2. We will adjourn until that time.

5

ADJOURNED

[12.58 pm]

10 **RESUMED**

[2.00 pm]

THE COMMISSIONER: Just before we go on, Ms Orr, there's a matter I want to raise. There has been some public commentary about evidence given to the Commission last week that suggests that I need to say something further about the processes used by the Commission in connection with the selection of witnesses and the subjects about which they are to give evidence. When the Commission wishes to adduce evidence in connection with a case study, it provides the relevant entity with a list of the issues which the Commission asks the entity to address in response.

20

This list has come to be referred to as a Rubric, and commonly it consists of a series of questions, usually it will be set out and dealt with sequentially in the statement or statements of the witnesses the entity proposes should be called to deal with the matters raised by the Commission. In the first instance, it is usually a matter for the relevant entity to identify who it says should be called to give evidence about the matters raised in a Rubric. The entity will usually do that at the point of providing the Commission with a draft of the relevant witness's statement. Sometimes, counsel and solicitors assisting the Commission will query the choice made by the entity and propose that another person or persons should be chosen. But, generally speaking, it is for the entity to identify the appropriate witness.

30

In the case of TAL, in the lead-up to the public hearings, the Commission was told by the solicitors acting for TAL that Ms van Eeden could address the matters in relation to which she provided a statement. The Commission was told that this included addressing matters relating to "underwriting, claims handling and dispute resolution". The Commission was informed of these matters in the context of the Commission having asked TAL to consider whether there were other witnesses who were capable of responding to the Rubrics. A number of other Rubrics were issued to TAL and TAL provided statements from other witnesses in response to those Rubrics.

40

It's important to emphasise that at no time have counsel or solicitors assisting communicated to TAL or to any other party that their witnesses should not read or discuss what other witnesses, whether from the entity or not, have said in their statements. It was then surprising to hear that Ms van Eeden had not been shown the statements made by other TAL witnesses, which had the potential to directly bear upon her evidence. It was also surprising that Ms van Eeden appeared to be

45

unfamiliar with a number of documents that the Commission had foreshadowed that she may be taken to.

5 Where it is proposed to take witnesses to documents that have been produced to the Commission by the entity that the witness represents, those documents are generally provided to the entity in advance of the witness being called. In the case of TAL, all of the documents that were put to Ms van Eeden by Counsel Assisting were provided to the solicitors acting for TAL a number of days in advance of Ms van Eeden providing her evidence. Ms Orr.

10 MS ORR: Commissioner, if we could have Mr Winter back in the witness box.

THE COMMISSIONER: Could you come back into the witness box, please, Mr Winter. Yes, Ms Orr.

15 MS ORR: Mr Winter, I asked you questions before lunch about an email from 18 December 2015 which was about – a bit more than a week after the website went live in 2015. Do you recall that?---Yes.

20 Now, I want to take you to another document, which is ALZ.0001.0001.0001 which is an email chain from January 2016. So a few weeks later. Could we please display 0002 and 0003. Now, once we have both those pages on the screen, you will see – you will see Ms Luke’s email sent on 18 December that I asked you about before lunchtime on the right-hand page. Do you see that?---Yes.

25 And then at the bottom of the left-hand page we can see that on 11 January, Ms Luke sent a follow-up email to Mr Brownsberger and Ms Whitaker. Do you see that?---Yes.

30 So they hadn’t responded to her email?---Not based on this, no.

And above that, we see that later that day, Mr Brownsberger did respond to Ms Luke. Do you see that email?---Yes.

35 He said that he was on leave for two weeks but that someone else would review in more detail?---Yes.

Do you see that he also said that his initial review did not seem to show a large risk, especially when reviewed against other insurers?---Yes.

40 Now, if we turn to 0001, we see Ms Luke’s reply to that email on 12 January. Do you see that?---Yes.

45 And under the heading Comparison With Other Competitors, Ms Luke pointed out that it was:

Not reasonable to compare Allianz’s website to its competitors.

?---Yes

Allianz had to work out for itself whether it was complying with the law?---Yes.

5 And she identified further misleading content on the website?---Yes.

She said, for example, on the About Us page, it states:

10 *Peace of mind with a globally trusted company, millions of people in Australia and worldwide rely on Allianz for their insurance needs. Allianz offers the security of a global insurance company while providing the personalised service you would expect from a much smaller company.*

You see that?---Yes.

15

And she said:

20 *This is not correct and misleading. We take great care in distinguishing between the local operating entity and the Allianz Group. The Australian insurer is not a global company, nor does it offer the security of a global insurance company. Our insurance business is not backed by Germany. We do not provide personalised service in the sense that we do not provide personal advice. I will be raising a compliance incident to ensure this content is rectified.*

25

?---Yes.

Now, after Ms Luke raised these problems, these further problems with the website content, did Allianz take down the offending parts of the website?---No.

30

Why not?---We were in the process of completing a review or – sorry, a process to review the entire website was initiated as a result of Iona’s review. And it – during that period, we identified three matters that we thought were of significance and we set in place a series of actions to rectify and remediate those items. So we thought it was appropriate to honour the representation where we thought it was significant and misleading. I – I get in this instance it should just be corrected. But that was the basis for not pulling down the website at the time.

35

40 So you didn’t correct these misleading assertions on your website at this time?---Yes, we did. We worked through that over the period of 2016.

But at this time?---Not at - - -

45 Mr Winter, did you correct these matters that were drawn to your attention by your corporate solicitor?---No.

All right. I will tender that email chain, Commissioner.

THE COMMISSIONER: Emails between 18 December '15 and 2 January 2016 concerning website refresh, ALZ.0001.0111.0001, exhibit 6.265.

5 **EXHIBIT #6.265 EMAILS BETWEEN 18 DECEMBER '15 AND 2 JANUARY 2016 CONCERNING WEBSITE REFRESH (ALZ.0001.0111.0001)**

10 MS ORR: Could I ask that you look at ALZ.0001.0140.0007. Now, this is an email chain from a bit later the same day, on 12 January 2016. And if we turn to the second and third pages of the email chain, 0002 and 0003, we can see that – we can see Ms Luke's email that we were just discussing. Do you see that on the right-hand side?---Yes.

15 And above where that email starts at the bottom of the left-hand page we see an email from David Parsons?---Yes.

He was the general manager of direct?---Yes.

20 And he said he would take up Ms Luke's concerns?---Yes.

But he wanted more specific examples of her concerns. Do you see that?---Yes.

25 And if we turn to the first page, 0001, we see that Ms Luke gave more examples of misleading content on the website. You see that?---Yes.

30 And these ones came from the website pages that had not been submitted for review, which Ms Luke described as the "supposedly reused content". Do you see that?---Yes.

She said that she had found substantial errors on the home contents page?---Yes.

And she referred to a temporary accommodation benefit. Do you see that?---Yes.

35 She said:

40 *The agreement which technical and I had with Erica was that the benefit is not to be advertised anywhere until we can come up with wording and qualifications that would address ASICs concerns. Allianz has previously been warned by ASIC about advertising this benefit without appropriate qualification (copy of ASIC letter attached for your information). When I met with technical this morning to work through the wording, we found that this benefit has re-emerged on the Allianz website without appropriate qualification and with incorrect benefit description. Allianz would likely get enforcement action if ASIC sees us advertising this benefit again despite ASICs concern.*

45

You see that?---Yes.

So by this time, several different kinds of incorrect or misleading content had been identified on your website?---Yes.

5 Including content that ASIC had previously specifically told Allianz was misleading?---Yes.

I tender that email chain, Commissioner.

10 THE COMMISSIONER: Emails of 12 January '16 concerning website refresh ALZ.0001.0140.0007, exhibit 6.266.

15 **EXHIBIT #6.266 EMAILS OF 12 JANUARY '16 CONCERNING WEBSITE REFRESH (ALZ.0001.0140.0007)**

MS ORR: Now, the next day, on 13 January 2016 a compliance incident was raised in relation to these issues?---Yes.

20 What's the effect of raising a compliance incident?---So once a compliance incident is raised, it then goes through a process of review in terms of whether that incident is reportable, and it also looks at what needs to be done to rectify that incidents and, if required, how to remediate for customers that are impacted.

25 All right. Can I ask that you look at ALZ.0001.0140.0011. We see here that on 29 January 2016 – so a couple of weeks after the compliance incident was raised – Ms Luke sent an email to corporate compliance?---Yes.

30 And she said:

Parts of the Allianz website have gone live without sign-off. This matter has been escalated to GM of direct, David Parsons. We have agreed with David and sales compliance (Sarah Allerby) that direct will put the full website into DCSO for sign-off.

35

You see that?---Yes.

And she then identified underneath that more aspects of the website that had been identified as being misleading?---Yes.

40

So by this stage, it was almost two months since the website had gone live?---Almost, yes.

45 And Allianz had been aware for that whole period that there were incorrect and misleading statements on the website?---Yes.

But Allianz had done nothing to take down any of the offending parts of the website?---Yes.

They had not?---They had not.

5

And as we saw – or as we see from the emails, Allianz had decided to review the product pages on the website. And I think you’ve given that evidence as well?---Yes.

10 All right. I will tender this email chain, Commissioner.

THE COMMISSIONER: Emails of 29 January ’16 concerning website refresh, ALZ.0001.0140.0011, exhibit 6.267.

15

EXHIBIT #6.267 EMAILS OF 29 JANUARY ’16 CONCERNING WEBSITE REFRESH (ALZ.0001.0140.0011)

20 MS ORR: Now, that review of the product pages that Allianz decided to initiate, that review should have happened before the website went live?---Yes.

Why didn’t it?---There was a failure in the document compliance sign-off process where at that point we only reviewed the new content and we didn’t look at the entire site.

25

Now, having decided to initiate that review of the product pages, how long did that review take?---That review went through – there’s sort of two parts to this, if I could distinguish. So the review of all products other than travel was completed in the first part of 2016. So by April. Travel insurance was completed by November of 2016.

30

So the review process took about 10 months. Is that right?---Yes.

Why did it take so long?---I – I would say we failed to give it the priority that it needed, and to allocate, you know, the appropriate sort of resource and priority to it.

35

And in that 10 month period did Allianz at any time take the website down?---No.

The review identified numerous issues with the website, didn’t it?---Yes.

40

Including issues that went far beyond the issues that were identified by Ms Luke in these emails?---Yes.

By April 2016, the issues that had been identified in the review included three different types of incorrect or misleading statements in relation to home insurance products?---Yes.

45

And before the review was over, numerous other incorrect or misleading statements were identified on other parts of the website?---Yes.

In relation to car insurance products?---Yes.

5

In relation to life insurance products?---Yes.

In relation to boat insurance products?---Yes.

10 And in relation to travel insurance products?---Yes.

Now, leaving the travel insurance policies to one side for the moment, you've annexed to your statement a list of the other incorrect or misleading representations that were identified on the website. If we could go to ALZ.0001.0092.0001. That's your statement. And the annexure is at 0027. Now, if we could bring up 0027 and 15 0028 together. We can see that there were 14 different types of incorrect or misleading statements in relation to home insurance?---Yes.

20 There were four in relation to car insurance?---Yes.

And if we move to 0029, we can see that there were three in relation to life insurance?---Yes.

25 And one in relation to boat insurance?---Yes.

Now, if we could go back to 0027 and 0028. And we look at the misleading content in relation to home insurance, we can see from the far right-hand column that some of those misleading statements were removed in January of 2016?---Yes.

30 But others were not removed until March or April 2016?---Yes.

And in one case, in item 8, which related to the renters' insurance web page, the representation wasn't removed until April the following year, April 2017?---Yes.

35 When was that incorrect and misleading representation identified, the one in item 8?---In early January 2016.

In early January 2016. So why did it take until April 2017 to remove it from the website?---Madam Orr, in tendering my statement today I had expected that that was 40 going to be corrected because it was actually fixed in 2016 in April in line with the other changes.

45 Are you saying there's a correction you need to make to your statement?---I thought it had been made but yes.

MR LOCKHART: We haven't informed the Commission of any correction to make, Commissioner.

MS ORR: I had thought that your witness statement had been tendered on the basis that it was true and correct, Mr Winter?---Yes.

5 But there is something in your statement that is not correct?---Yes. In the past week, I had identified and questioned that date because it stood out to me as well. You know, why we would fix everything else other than that, and I went back and checked. And it was fixed at 2016. I apologise that it wasn't corrected and tendered today.

10 So what date should we read instead of 7 April 2017 in item 8 of this table?---7 April 2016.

15 I see. Now, can I ask that you look at item 5. We see that many of the product features for home insurance policies on the website were missing significant qualifications or were missing sub-limits. What's a sub-limit?---Within a – a category of cover, it would be a limitation that might apply to an individual item within that category, for example.

20 So a limit on the amount that could be recovered under the policy?---Yes.

Is that right?---Yes.

25 So many of the product features for home insurance were missing that information for the consumer?---Yes.

And if we look at item 6, we see that the home insurance page said:

We guarantee the quality of repairs.

30 ?---Yes.

Did Allianz guarantee the quality of repairs under its home insurance policies?---No.

35 In item 7, we see that the home building insurance page used the liability cover wording from a different policy for home contents insurance policy which had more comprehensive liability cover. Is that right?---Yes.

40 Do you accept that these are troubling misrepresentations for you to have had on your website, Mr Winter?---Yes.

You accept that they may well have misled numerous customers?---Yes.

And that they were contrary to financial services laws?---Yes.

45 Now, each of these incorrect or misleading statements was identified in the course of the review over the period from January to November 2016. Is that right?---Yes.

And did Allianz report those breaches to ASIC at any stage in 2016?---No.

Did it consider whether to report at least some of them to ASIC?---Yes.

5 And it decided not to?---Yes.

Now, the body that made the decision not to make a report to ASIC was Allianz's management risk and compliance committee?---Yes.

10 It made that decision in May 2016?---Yes.

And by May 2016, all but one of the – I'm sorry, I had been working on the assumption of the April 2017 date. We now know that all of the 14 incorrect or misleading representations in relation to home insurance policies had been
15 removed?---Yes.

Why did it take Allianz until May 2016 to consider whether to make a report to ASIC?---We had to do a detailed review to actually identify the issues that were incorrect on the website. And then in considering – once they're identified you've
20 actually – we needed to work through the significance of them, and to identify, you know, the impact that it would have on consumers. So that process took through to get the fact base in place, took through till April.

They were significant enough to be removed from the website in the course of
25 January, February and April 2016?---Yes.

And you were present at the meeting of the committee on 6 May 2016 when the decision not to report to ASIC was made?---Yes.

30 You've not exhibited the agenda or minutes of that meeting to your statement. Is that right?---Yes.

Or any of the reports that were submitted for the purpose of that meeting?---Yes.

35 Instead, what you've exhibited for that meeting is one and a half pages of typed, undated notes that you tell us relate to that meeting?---Yes.

Those notes are exhibit 11 to your statement, ALZ.0001.0067.2757. This is a two-page document. And it would be helpful if we could display both pages on the
40 screen. These are the notes that you tell us relate to the meeting about whether to report these matters to ASIC in May 2016?---Yes.

Did you make these notes?---No.

45 Who made the notes?---As part of my submission or a part of the meeting, sorry?

Who created this document?---Our legal representation.

When did this document – when was it - - -?---Sorry, I might be confused here.

5 Can you explain to us what this document is?---It represents an overview of the discussion or the – the – the minutes of that meeting, the ARICO meeting in May of 2016.

It represents an overview of the discussion at the meeting?---Yes.

10 Is that right?---Yes.

When was it created?---As part of putting my witness statement together.

It's a document that has recently been created, is it?---Yes.

15 And who created it?---Not me personally but it was created as part of our legal team's effort to pull the documents together for this submission.

So this is not a contemporaneous document from the meeting?---No.

20 This is a document that your lawyers have created. Is that right?---Yes.

In preparation for you giving evidence at the Royal Commission?---Yes.

25 But you've described it as notes that relate to the meeting?---Yes.

So what was used by your legal team to create this two-page document?---My understanding is it's a extract from the – the papers submitted at that meeting.

30 Why did your lawyers not submit the papers that went to the meeting rather than creating this document to summarise or explain what was put to the meeting?---Well, the papers for the – that risk and compliance meeting cover a whole range of topics.

35 Yes?---And my understanding was we – we narrowed that down to just present the information relevant to the Rubric.

Who narrowed that down, Mr Winter?---I don't know.

Did you narrow that down?---No.

40 Did you have any role in the preparation of this document?---No.

45 So just so that I understand, this is a document that your lawyers have created which you've annexed to your statement and described as notes that relate to the meeting?---Yes.

But we now understand it's a document your lawyers created recently to summarise or explain the contents of the reports that were submitted to that meeting?---The – it's a direct extract from the notes from that meeting.

5 Direct extract?---Sorry, a direct extract from the papers submitted at that meeting.

From which papers submitted at the meeting?---The papers submitted at the Allianz risk and compliance meeting.

10 Now, the papers that were submitted at that meeting consisted of a number of different reports, didn't they?---Yes.

So which of the reports is this an extract from?---I – I would say the documentation relating directly to that meeting.

15

But do you agree with me that there were multiple reports submitted to that meeting?---Yes.

20 Are you able to tell me which report you think this is an extract from?---Sorry, there's a – it would be a compliance risk report.

A compliance risk report. And your understanding is that this is a direct extract from the contents of the compliance risk report created for the meeting on 6 May 2016?---Yes.

25

All right. Why not annex the compliance risk report?---Because it didn't respond in full – sorry, the full content of that report didn't respond to the Rubric.

30 I see. Was the website breach or as it's termed in this document that's recently been created the direct website breach, was that the only matter that was considered at the meeting on 6 May 2016?---No.

Now, if we look at the contents of this note or this – I hesitate to refer to it as a note, Mr Winter. This document - - -

35

THE COMMISSIONER: Document.

MS ORR: This document, we see on the first page that the document refers to a "multitude of errors" on the website?---Yes.

40

It sets out some of the most significant errors?---Yes.

They include the statement about guaranteeing the quality of repairs on home insurance policies?---Yes.

45

Which Allianz did not do?---No.

And the statement about providing legal liability cover for home buildings cover which, again, Allianz did not do?---No.

5 And then the document records that there were approximately 120 further unique errors from minor to moderate?---Yes.

10 Where do we see those further 120 unique errors in the annexure to your statement?---They're captured in the overall headline summary. So rather than have the same – sorry, the same error could appear on multiple web pages. So rather than list each web page we've given the statement.

But they're described as unique errors here. What do we understand that to mean?---Well, unique to me would be one individual error.

15 120 individual errors?---Yes.

But you've chosen to describe them to the Commission in a different way?---Yes.

20 Presenting a much smaller number of errors in your statement?---It's the – it's the same core error but rather than put forward the same error, you know, multiple times, we've given it to you in one summary – sorry, I've given it to you as one item.

25 But you didn't make clear, did you, that you were providing those as representative examples of much larger numbers of errors?---To be clear, they're not representative examples of a large number of errors. They're the same – where it makes a misleading statement or misrepresentation, that could be evident in the same way on a number of different landing pages.

30 But where do we see in your statement or your annexure that those errors were present multiple times in multiple different parts of the website?---You don't.

And should we have, Mr Winter?---Yes.

35 Back to the document in front of us at the moment, we see that underneath the reference to the 120 unique errors, there's a note of the decision about whether to report the matter to ASIC. Do you see that?---Yes.

40 And the notes record – I'm sorry, the document records that the breach was not reportable to ASIC?---Yes.

Do you see that?---Yes.

And two reasons are given for that decision?---Yes.

45 The first is that only limited refunds to customers would be necessary?---Yes.

And the second was that you had a robust document compliance protocol. Is that what DCP stands for?---Process.

5 Process. A robust document compliance process. Is that the same as the DCSO process that I asked you about earlier?---Yes.

And the document records that it was “just not followed in this instance”?---Yes.

10 Now, I want to come back to that. But the document then goes on to say that the decision not to report to ASIC:

Does rely on us making good on product representations at the claims end.

15 ?---Yes.

So that was still being worked through?---That had been agreed.

20 What had been agreed?---That we would honour the representation in the significant issues identified.

Well, where do we see that here in this document, Mr Winter? What we see is:

25 *But does rely on us making good on product representations at the claims end. Still being worked through with David’s team.*

?---It’s not clearly stated.

30 Well, what this suggests is that the committee didn’t know at this point whether Allianz would be able to make good on the incorrect and misleading representations when claims were made. That was still being worked through?---Yes.

The document then goes on to consider the causes of the misleading statements. And we see that the document says:

35 *Simple. Authors of the pages did not follow the DCP process. I haven’t heard a convincing reason for why.*

Do you see that?---Yes.

40 And then over the page at 2758, we see a list of actions?---Yes.

And they were:

45 *General education of DCP requirement; key – digital team will not make live without record of DCP approval and confirmation that web page in test environment is identical; websites more complex than print pages and becoming increasingly so, eg, rotating banners, click through notes. Need to*

make sure all put into DCP. And business improvement review of DCP made aware and considering.

You see that? They were the action items?---Yes.

5

According to this document. And in the last bullet point on the page, we see:

Noeline may have a view on the risk side. Disappointed to see Tickit question. "Has your business unit followed the document compliance sign-off process for all communications needing approval" was "compliant".

10

Now, do we understand that to mean that the ticket system – can you explain what that is?--- Tickit is an internal compliance system that we use to manage compliance incidents. And to get attestations from staff regarding they're following compliance procedures.

15

Right. So that's where your staff record that they have complied with compliance requirements?---Yes.

20

And what the Tickit system showed in relation to the material uploaded to the website was that the business unit had followed the document compliance sign-off process, and approval was marked as compliant?---Yes.

25

What does that suggest to you, Mr Winter?---It's an error.

It's an error?---Yes, I mean it's just inaccurate. They haven't followed it so the attestation should have been answered as no.

30

Does it trouble you that they regarded their actions as being compliant?---Yes.

I want to come back to the previous page, 2757 and the item that said:

Robust DCP system – just not followed in this instance.

35

Is that right? Do you agree with that assessment?---Not with the benefit of hindsight, no.

40

Was the document control protocol system a robust system?---I think it was a functioning system. I think that somewhere in that process we needed to call out – or we needed somebody to say, "We need to see the full content." So I don't agree with the robust description.

45

It was a functioning system but not a robust system. Is that how you would describe it?---Yes.

What do you mean by a functioning system?---Well, I've been back and looked at this in detail. If you looked at the number of items that are reviewed by the

document compliance sign-off system, when it's followed, it functions well. In this instance, for whatever reason, it hasn't been followed. So I – I can't go as far as saying it's robust.

5 Well, you say it was followed. Is that your evidence?---No. I said I've seen plenty of examples - - -

Where it was followed?--- - - - that go through where it was followed and it functions well.

10

And it was not followed in this instance?---Yes.

But it was followed in relation to the new content that was uploaded. Is that right?---The new content – in my earlier evidence I said we only submitted content as it related to the individual items, not how it was situated within the broader site.

15

Yes. So it wasn't followed for the integrated content, the new content integrated - - -?---No.

20

- - - into the website?---No.

And the document tells us that – whoever is intended to be quoted here – and we will try and get to the bottom of that – in this document under the heading Cause says:

25

I haven't heard a convincing reason for why the DCP process was not followed.

Do you see that at the bottom of the page?---Yes.

30

So it wasn't clear whether the process required only a review of the new content or a review of the new content when integrated into the further content, was it?---No.

And thus action items that include more education about the DCP requirement?---Yes.

35

So the committee took the view that there was a lack of knowledge or understanding of the DCSO process?---Yes.

40

And I want to suggest to you that what we see in terms of the characterisation of the errors, the cause of the errors, and the actions to be taken in response to the errors indicates that there were clear problems known to the committee at the time of this meeting with the way the DCSO process was operating and being applied within Allianz?---Yes.

45

You accept that?---Yes.

Now, before we leave this document, I want to try and explore what document you say this is an extract from. We have located a report that went to this meeting, which I will bring up. ALZ.0001.0112.0072. Now, this is the first page of a bundle of reports that appear to have gone to that meeting. I will wait till it comes up and ask
5 you if you've seen this before. Have you seen a bundle of reports that went to the meeting?---Yes.

And if we turn to 0087, we see there a report entitled Corporate Compliance?---Yes.

10 Now, is this the report that you think this document is an extract from?---In part, yes.

In part. What do you mean by that?---This document won't have included the discussion points that are listed in my witness statement. So some of those – some of the points in the extract - - -

15

Yes?--- - - - that the Commissioner referred to as the document won't be included in full here.

20 Where are they from then?---I would expect that they're from the minutes of that meeting.

The minutes of the meeting. You now think it's an extract of the minutes of the meeting?---I think it's an extract from both.

25 Do you think it's a bringing together of parts of this report and parts of the minutes of the meeting?---Yes.

30 All right. Could I ask that you look at 0094 within this document, which appears to be the relevant part of the compliance report, corporate compliance report. Do you see:

... misleading content on Allianz website.

35 ?---Yes.

Now, do you say that any part of the document – I will refer to it as the document – comes from here?---Yes.

40 Where?---If you read through root cause and remediation.

Well, let's bring up the note against this document on the other side of the screen. ALZ.0001.0067.2757. If we could have that on one side of the screen and this document on the other. Perhaps you could explain in what way you think the document constitutes an excerpt from the corporate compliance report?---From – so,
45 I mean, it's not word for word verbatim, I'm sorry.

It's not an excerpt from that document, is it, Mr Winter?---It's a – no, not a direct extract.

Well, is it any form of extract from that document?---No.

5

I will tender that bundle of reports for the meeting, Commissioner, the meeting on 6 May 2016.

10 THE COMMISSIONER: Bundle of reports meeting of ARICO, 6 May '15,
ALZ.0001.0012.0072 becomes exhibit 6.268.

**EXHIBIT #6.268 BUNDLE OF REPORTS MEETING OF ARICO, 6 MAY '15
(ALZ.0001.0012.0072)**

15

MS ORR: Have you seen the minutes for the meeting, Mr Winter?---I – I don't recall specifically. I would imagine I would have read the minutes post that meeting, yes.

20

And what makes you think that the document on the left-hand side of the screen is an excerpt from the minutes?---It is just what I had expected it to be. I haven't got a - - -

25 You don't know if it is?---No.

That's just an expectation that you have?---Expectation, yes.

30 All right. I want to come back to what was decided at this meeting for which we have the document on the left-hand side. And now the bundle of reports, which include the page on the right-hand side of the screen. The decision at that meeting was that the breach was not reportable to ASIC?---Yes.

35 Are you familiar with section 912D of the Corporations Act, Mr Winter?---Yes.

You know that it requires Australian financial services licensees to report significant breaches of the law to ASIC?---Yes.

40 And are you familiar with ASIC Regulatory Guide 78?---Not off the top of my head, no.

Do you know that there's a regulatory guide issued by ASIC that deals with breach reporting by AFS licensees?---Yes.

45 Are you familiar with that document?---I would generally engage with our legal counsel and take advice on, you know, nature of the law of that extent.

I will bring it up to assist you. It's RCD.0021.0001.0145. Now, you can see that it's Regulatory Guide 78 entitled Breach Reporting By AFS Licensees. And if we turn to 0149 within the document, we see under the – under the question:

5 *What breaches (or likely breaches) must you report?*

Do you see that?---Yes.

The regulatory guide says this:

10

As an AFS licensee, you must give us a written report as soon as practicable, and in any case within 10 business days of becoming aware of a breach (or likely breach) if you breach any of the specified obligations, you are likely to breach any of the specified obligations, and that breach (or likely breach) is

15

significant.

You see that?---Yes.

20 And then at 0151 we see a heading What Does Significant Breach Mean? And underneath that, three paragraphs down:

You must have regard to a number of factors listed in section 912D(1)(b) when deciding whether a breach or likely breach is significant. See table 2.

25 And if we go to table 2 at 0152 and 0153. We see that table 2 picks up each of the requirements in the subparagraphs of section 912D(1)(b). Do you see that?---Yes.

Are you familiar with these matters that need to be considered in determining whether a breach or likely breach is significant?---Yes.

30

You know that they include the number or frequency of similar previous breaches?---Yes.

35 The impact of the breach or likely breach on the ability to provide the financial services covered by the licence?---Yes.

The extent to which the breach or likely breach indicates that the licensee's arrangements to ensure compliance with those obligations is inadequate?---Yes.

40 And the actual or potential financial loss to clients arising from the breach or likely breach?---Yes.

45 I will tender that – in fact, I'm sorry, that document has already been tendered in another module. It's exhibit 1.6, Commissioner. Now, I want to go back to the document that you described initially as the notes relating to the meeting.

ALZ.0001.0067.2757. And, again, if we could have 2757 and 2758 on the screen. I want to ask you where in that document we see any discussion of the number or

frequency of similar previous breaches, which you know Allianz was required to have regard to by section 912D(1)(b)(i). Where do we see that discussed?---It's not there.

5 Was it discussed?---Not that I can recall.

You don't recall - - ?---Sorry, I don't recall.

- - - it being discussed?---I don't recall.

10

But there's no record of it being discussed?---No.

Where do we see any discussion of the impact of the breach on your ability to provide the financial services covered by the licence?---It's not stated there.

15

Was it discussed?---I don't recall.

On the second page here we see a reference to:

20

Disruption from a breach like this is material.

Do you see that at the second dot point on the right-hand page?---Yes.

25

So it would have had some impact on Allianz's ability to provide its financial services?---Not directly, no.

Well, where do we see consideration of that factor in the decision not to report the breach?---It's not stated.

30

And where do we see discussion of the extent to which the breach indicated that your compliance arrangements were adequate or inadequate?---It's not stated.

35

Was that discussed?---I don't recall. I know there was a discussion – sorry, there's a comment there relating to the robust compliance process. So I assume that was taken as meaning that our compliance systems were adequate.

But they weren't adequate, were they, Mr Winter?---Not in this instance.

40

And they were known by the committee to be inadequate. We see that from the action items that the committee regarded as necessary to deal with this incident?---Yes.

45

Where do we see the discussion of the actual or potential financial loss to your customers arising from the breach?---It's in the paper you referred to earlier as the ARICO meeting paper.

What do we see from that document or that set of documents?---The only financial impact that we identified at that time were refunds to certain customers relating to representation for their eligibility for a discount. And it lists, I think if – there was in the order of \$3000 of refunds that were made to customers.

5

But at the time of the meeting we see from the document on the screen that it wasn't clear whether Allianz would be able to make good on the representations when the claims were made?---It's not stated there, no.

10 No, that is stated there. That it was – what is stated there is that it was still being worked through as to whether Allianz would be able to make good on product representations at the claims end?---Yes.

15 So where do we see the consideration of the potential loss to customers in the event that you could not make good on those representations?---It's not stated.

Was it considered?---I think we always worked from the basis of assuming that we would make good and honour that representation.

20 You assumed that you would make good but you didn't know whether or not you could?---Yes.

25 I want to suggest to you that each of the four matters referred to in section 912D(1)(b) which I took you to earlier, all led to the conclusion that this was a significant breach that needed to be reported to ASIC?---We have a process for reviewing reportability. It was followed in this case, coming out of the – out of that process we decided not to report.

30 What do you say to my suggestion that each of the four matters in section 912D(1)(b), had they been considered, indicated that this was a significant breach that ought to have been reported to ASIC?---I don't think that's the case for the fourth point, in terms of the significance for the – the dollar impact to customers.

35 Yes?---For the other three, I can see – I agree with your – with – that you – sorry, I agree they could have been reported on that basis.

This was the wrong decision, wasn't it, Mr Winter, not to report this to ASIC?---Yes.

40 At the time of this meeting, the incorrect and misleading content had been on the website since at least December 2015, at least about five months?---Yes.

And the website had been accessible to the public throughout that period?---Yes.

45 Now, we are locating the minutes of that meeting, and I will come – we do have those ALZ.1000.0012.0921. It's a three-page document. Perhaps if we could bring the first and the second page on to the screen. Four pages. We will have the first and the second. The first and the second pages don't appear to deal with this matter. If

we bring up – do you agree with that? Can you see any reference to this matter on the first or the second pages?---No.

5 Let's bring up the third and the fourth pages of the minutes. We see there item 7, Compliance Update on the left-hand side?---Yes.

Do you say that the document you annexed to your witness statement is an excerpt or extract from these minutes?---No.

10 I tender the minutes, Commissioner.

THE COMMISSIONER: Minutes of Australian risk committee meeting 6 May '16 ALZ.1000.0012.0921, exhibit 6.269.

15

EXHIBIT #6.269 MINUTES OF AUSTRALIAN RISK COMMITTEE MEETING 6 MAY '16 (ALZ.1000.0012.0921)

20 MS ORR: So I take it, Mr Winter, that you're unable to assist us to understand where the content of that document you've annexed to your witness statement came from?---No, I can't.

25 Now, when the decision was made not to report this matter to ASIC in 2016 the review of the web pages was ongoing, wasn't it?---Yes.

And Allianz prioritised the review of the home insurance and car insurance pages over the pages that dealt with other types of insurance. Is that right?---Yes.

30 Why?---It was a combination of the amount of content and the volume of people that visited those pages.

Amount of content on the pages and the volume - - -?---Yes, the number of people that visit the sites.

35

The volume of visitors to those pages. Is that right?---Yes.

They were the matters that led to the prioritisation of home and car insurance over other types of insurance?---Yes.

40

Could I ask that you look at ALZ.0001.0102.0127. Now, if we – you can see that this is an email from 5 February 2016. And if we bring up 0129 and 0130, we can see an email from Ms Luke to a group of people on 3 February 2016. So you understand I've gone back now to February 2016?---Yes.

45

We were dealing with the May 2016 meeting. An email from Ms Luke on 3 February 2016 with the subject line:

Allianz website review – scope of review and cost estimate.

Do you see that?---Yes.

5 And we see that partway down the page she said, under next steps:

10 *(1) David and Nadine: please review the estimate and the scope which are set out below and let me know if they are approved for your business units. External legal estimates that their review can be substantially completed by 12 February 2016 if they have approval to start work this week with the balance to follow in the week of 15 Feb.*

You see that?---Yes.

15 And on the next page she set out the cost estimate for the external legal review, which was a total of 25 to \$30,000. Do you see that there?---Yes.

20 And of that, 13,500 to 15,000 was to review all of the personal insurance pages?---Yes.

Now, if we move to 0128, we see that a couple of days later, on 5 February – this is in the bottom half of the page – Ms Luke followed up on the cost approval for the external legal work. Do you see that?---Yes.

25 She appears to have been concerned that if approval wasn't given, there would be further delays in removing the misleading content from the website?---Yes.

And above that we see Mr Parsons, the general manager of direct said:

30 *The external costs are significant and therefore are currently sitting with Mick for approval.*

Now, is Mick you?---Yes.

35 Mr Parsons went on:

40 *Can you please confirm that you do not have the internal capacity to review our website? As based on the proposed costings our preference would be internal review and utilising external when we are seeking clarification.*

?---Yes.

45 And if we move to 0127 we see Ms Luke's response to that email. She set out a proposal, if there wasn't approval of the costs for external legal review. Do you see that? Paragraph 1:

5 *Due to lack of internal capacity at this current time and the need to meet other existing work commitments, from the week of 15 Feb I will spend two days a week to review the website internally, starting with home and motor, until the whole website review is complete. I will share some of the work with my colleague, Fatimah, so the direct and life teams can expect some queries from either myself or Fatimah. In terms of priority, we will do home, motor, life, business in that order, noting that life have some serious issues so we will do what we can to give it some priority as well. For travel, EHA and RSA –*

10 What are those?---EHA is emergency home assistance and RSA is roadside assistance.

Continuing:

15 *For each of those, we will wait for Sarah to confirm who bears this cost. FI – ?---Financial institutions.*

Continuing:

20 *... or direct before we review any further. Any external advice we obtain on these pages, we will share them with AGA legal –*

25 That's AWP legal?---Yes.

Continuing:

... to ensure we are all on the same page.

30 Now, Mr Winter, did you give approval for the costs for the external legal review?---The external – I don't recall specifically. The external legal review never proceeded so I would assume not.

35 Well, it seems to have been sitting with you for approval. We saw that from 0128. Did you or did you not provide approval?---No.

And why not?---I thought on the – these decisions are always a trade-off. I thought we would complete the review internally.

40 You thought it was better to have your corporate solicitor work on this two days a week around her other work until it was done?---Yes.

Was that the right decision?---No.

45 How much did the review ultimately cost, do you know?---I don't know.

Do you know anything about how it compares to the 25 to 30 thousand dollar estimate if it had been done by the external lawyers in February?---I think if you traced it right through to today it would be substantially more.

5 Now, I will tender that email chain, Commissioner.

THE COMMISSIONER: Emails of 5 February '16 concerning Allianz website review scope of review and cost estimates, ALZ.0001.0102.0127, exhibit 6.270.

10

EXHIBIT #6.270 EMAILS OF 5 FEBRUARY '16 CONCERNING ALLIANZ WEBSITE REVIEW SCOPE OF REVIEW AND COST ESTIMATES (ALZ.0001.0102.0127)

15

MS ORR: Now, I want to suggest to you, Mr Winter, that your decision not to approve external lawyers to deal with this in February was reflective of a lack of prioritisation within Allianz of fixing this problem?---Yes.

20 You accept that?---Yes.

So the review instead was done internally and took about 10 months to complete?---Yes.

25 And the first stage of the review involved uploading all of the web pages to the DCSO system?---Yes.

That took until April 2016?---Yes.

30 And Ms Luke then reviewed those pages herself to identify issues?---Yes.

And by about mid-May 2016 she had identified 28 issues in relation to the travel insurance content?---Yes.

35 And Allianz was ready to begin, you say, preparing a rectification plan for the travel insurance content. You recall that?---Yes.

At that time, when you were ready to begin preparing a rectification plan for the content, did you reconsider whether or not to report this to ASIC?---No.

40

Why not?---I think by that stage travel had – we had made the decision around the products other than travel, and for – we just failed to actually stop and consider travel as a separate matter.

45 Even though Ms Luke had identified 28 new issues in relation to the travel insurance content?---Yes.

Should you have considered whether to report it to ASIC?---Yes.

Should it have been reported to ASIC at that time?---Yes.

5 Now, before that rectification plan that you've mentioned for the travel insurance content could be prepared, something happened at Allianz, didn't it? Someone noticed that not all of the travel insurance content had been uploaded to the DCSO system in the first place?---Yes.

10 So all of the content had to be reloaded?---Yes.

And re-reviewed?---Yes.

So the process was extended by a number of months?---Yes.

15

And by the end of August 2016, Ms Luke expected to complete her review by the end of September 2016. You tell us that in your witness statement?---Yes.

20 So more than eight months after the website went live, the review was still ongoing?---Yes.

But you hadn't approved and could have approved the 25 to 30 thousand dollars for the external lawyers who would have completed it in February?---Yes.

25 Now, from at least May, if not earlier, Allianz knew that there were misleading and incorrect statements in the travel insurance content, didn't it?---Yes.

And it didn't take down the travel insurance pages on the website?---No.

30 Why not?---I don't believe it was ever considered. I think we looked at it and thought fix the issues that were – needed to be corrected.

35 Well, why not take the misleading statements down while you were fixing the issues, Mr Winter?---I agree. That was a course of action we just decided – we didn't actually consider doing that.

Should you have considered that?---I think that's reasonable, yes.

40 Again, this is demonstrative, I want to put to you, of Allianz not prioritising compliance and compliance with the law?---Yes.

You accept that?---Yes.

45 Now, the review wasn't completed by the expected deadline of the end of September. We've heard that already. And another factor that extended it was that on 22 September AWP issued a supplementary PDS in relation to a travel insurance product?---Yes.

And as a result of that, another review needed to be done?---Yes.

To assess whether that supplementary PDS raised further issues with the website?---Yes.

5

But you didn't take down the travel insurance part of the website while that further review was happening?---No.

And that review was completed on 18 October 2016?---Yes.

10

And following that, Allianz's legal team prepared an issues list and proposed rectification plan?---Yes.

How long did it take to prepare that, do you recall?---That was put to AWP in November of 2016.

15

Okay. So between October and November to prepare that plan. Now, I want to take you to that document. It's exhibit 12 to your witness statement.

ALZ.0001.0067.0064. This is the issues list and proposed rectification plan that Allianz's legal team created?---Yes.

20

And it was provided to AWP in November 2016?---Yes.

And at the top we see a few dot points setting out what Allianz wanted AWP to do with this document. Do you see that?---Yes.

25

Allianz wanted AWP to:

... go through each item within the context of each web page and determine whether the statement is clearly inconsistent with the PDS and therefore have to honour; whether the statement is missing significant qualifications but because of how it is presented there is an arguable position that it is possible to rely on the PDS; and consider whether the statement is missing significant qualifications but because of placement of any further explanation or reference to PDS or disclaimer, the disclaimers are ineffective, in which case AWP is to decide what the remediation needs to be.

30

35

You see that?---Yes.

Now, nothing in these points conveyed to AWP that Allianz regarded this as an urgent task, did it?---No.

40

Should it have?---Yes.

And underneath that, in the left-hand column of the table, we can see the issues that Allianz had identified with the travel insurance content. We can see that the first concerned a statement on the website that:

45

Wherever you're travelling, whatever your needs, Allianz travel insurance has the range of options to provide the right travel cover for your budget.

That was the representation?---Yes.

5

Does Allianz travel insurance apply wherever you're travelling?---No.

In the next column we can see that there were two issues identified with this. Misleading because (a):

10

Policy has an exclusion not covering areas where DFAT has provided travel warnings for (b) to state that the policy is "right for your budget" would imply the insured's personal circumstances are taken into account (personal advice). In reality, Allianz is unaware of the customer's budget.

15

And in the third column under the heading Breach, we see that this was described as:

A misleading or deceptive statement.

20 Do you agree that it was misleading, Mr Winter?---Yes.

Do you agree that it was deceptive?---Yes.

25 And the next item in the table was the statement – we might need to blow this up a bit because the lettering is very small:

Our basic travel insurance includes unlimited cover for overseas emergency medical assistance and medical or hospital expenses at a very reasonable price.

30

Now, did that product include unlimited cover for overseas medical expenses?---No.

Under the policy Allianz would pay only up to \$1000 for certain medical expenses, wouldn't it?---Yes.

35

And in the third column under the heading Breach – we will just need to pan back out – we see that this was also described as a misleading or deceptive statement. Do you agree that it was misleading?---Yes.

40 And deceptive?---Yes.

And if we turn across to 0065, we see that some of the issues are highlighted in red. What did that mean?---I take it to mean they were the most significant. And of highest concern.

45

Most significant and - - -?---Of greatest concern.

Of greatest concern. Now, I don't want to go through the entirety of this document, but do you agree that by the time this lengthy issues list and rectification plan was completed on 24 November 2016, there could have been no doubt that there were numerous misleading and deceptive statements about travel insurance products on Allianz's website?---Yes.

So did Allianz move at this time to take down the travel insurance pages?---No.

Why not?---Again, it wasn't even considered an option at that stage, I don't believe.

Did Allianz move to report the matter to ASIC at this time?---No.

Should it have?---Yes.

The only action that Allianz took at this time, having created this issues list and rectification plan, was to send it to AWP?---Yes.

And you say in your statement that Allianz sent it to AWP for action?---Yes.

Do you recall you used that phrase?---Yes.

You didn't exhibit the communication from Allianz to AWP about the issues list to your statement, but I want to bring it up for you. It's AZW.0001.0012.0325. I'm sorry, we have that now. If we could also bring up 0326. You can see the email that starts at the bottom of the first page. That's an email from Ms Luke to others within Allianz, including Erica Nock. She was the part of the retail distribution group?---Yes.

This is an email from 24 November 2016. Ms Luke attached the issues list for the travel pages to her email?---Yes.

And over the page she said:

I suggest sending the list to AWP and have them come back with their recommended actions on the issues list and have them mark up the web pages for our review.

You see that?---Yes.

And then if we go back to the first page above the email from Ms Luke we see that Ms Nock sent the document to Joe Moore?---Yes.

He was from AWP?---Yes.

She said:

As per the comments below, we need someone from AWP to review the attachment and discuss with your product and legal the comments in the notes section of the document. Then mark up the document with the actual action agreed to be taken and we can then discuss.

5

?---Yes.

I will tender that email.

10 THE COMMISSIONER: Emails between Allianz and AWP of November '16, AZW.0001.0012.0325, exhibit 6.271.

15 **EXHIBIT #6.271 EMAILS BETWEEN ALLIANZ AND AWP OF NOVEMBER '16 (AZW.0001.0012.0325)**

MS ORR: By this stage, November 2016, it had been almost a year since the new website had gone live and these issues had first started to be identified?---Yes.

20

In that time, Allianz had identified a lengthy list of issues with the travel insurance pages?---Yes.

Those travel insurance pages had been accessible to the public the entire time?---Yes.

25

And potentially influencing decisions by customers about whether to purchase Allianz travel insurance?---Yes.

Did Allianz give AWP a timeframe within which it wanted them to develop the plan for how to fix the travel insurance pages?---No.

30

No timeframe?---Not that I've been able to find, no.

So having formed the view that there were misleading and deceptive statements about travel insurance on the website, there was no deadline imposed on AWP to take action?---No.

35

And there was no attempt to convey to AWP in any way that this required an urgent response?---Not in the email, no.

40

Have you seen any other communication indicating that this required an urgent response from AWP?---No.

Had Allianz told AWP about any of the misleading content before this time?---I can't be sure. I haven't – I – I'm assuming this was the first occasion.

45

The day after Allianz gave the issues list to AWP, AWP told Allianz it would get its legal and product teams to review it. You tell us that in your statement?---Yes.

And that it would provide Allianz with comments?---Yes.

5

Why didn't Allianz just fix the travel insurance pages on the website?---It's our website page. The landing site is our website page. It should have been fixed at this time.

10 Allianz should have fixed it?---Yes.

Or you could have told AWP the changes they needed to make. Did you do that?---We're in control of our own landing page so we should have done it ourselves.

15

So why was this sent to AWP for their comment in the first place?---I think it goes to the nature of AWP being the underwriting agency with responsibility for travel. And so we've put it to them to review to make sure that it – our understanding, our interpretation lined up correctly.

20

But you didn't need to do that. You accept that today. You could have gone ahead and fixed the website yourself?---Yes.

But Allianz elected not to do that?---Yes.

25

So by this time, your lawyers had spent at least eight months reviewing the website and creating the issues list and rectification plan. What more was there for AWP to do?---AWP needed to review it, again make sure that it lined up our interpretation of it had lined up exactly with how the product worked. I agree with you, it wasn't a necessary step.

30

So a couple of months later, by early February 2017, you didn't have any response from AWP to the issues list, did you?---No.

35 So you followed up?---It was followed up, yes.

Yes. Well, I will ask you to look at AZW.0001.0012.0302. We see the email – unfortunately, the sender has been redacted from the top of the page, but we can see from the footer that this is an email from Erica Nock. Do you see that?---Yes.

40

To Joe Moore of 2 February 2017:

45

Hi Joe, following up on the below email trail and apologies if you have replied already and it has been lost in my inbox. If you can confirm your legal team's position on these items. We would like to resolve this compliance incident as soon as possible.

?---Yes.

No sense of urgency conveyed in this email, Mr Winter?---No.

5 Do you agree that it was now, if it had not already been for some time, urgent that this be fixed?---Yes.

I tender that email, Commissioner.

10 THE COMMISSIONER: Email from Nock to Moore, 2 February '17, AZW.0001.0012.0302, exhibit 6.272.

15 **EXHIBIT #6.272 EMAIL FROM NOCK TO MOORE, 2 FEBRUARY '17 (AZW.0001.0012.0302)**

20 MS ORR: So the issues list was provided to AWP in November 2016. This follow-up from Allianz occurred in February 2017, a couple of months later. When did AWP ultimately return the issues list with comments to Allianz?---Not until May 2018.

May 2018?---Yes.

25 Almost 18 months after Allianz asked AWP to provide the comments on the issues list?---Yes.

30 And the incorrect misleading and deceptive statements about travel insurance were accessible by the public over that further 18 month period?---Yes.

Why did it take AWP so long to give you their comments on the issues list?---I think they simply failed to prioritise it.

35 As Allianz had done?---Yes.

You tell us in your statement that Allianz followed up with AWP in relation to the issues list a couple of months after it was handed over in February 2017. Is that a reference to this email?---Yes.

40 And then nothing else happened until July 2017 when you tell us that it was discussed – it was one of a number of matters discussed at a general regular work in progress meeting between Allianz and AWP?---Yes.

45 What was the nature of the discussion in that meeting?---From my understanding, it's – it was simply raising it again with AWP and asking them to obtain a status of when those items would be addressed.

So a request for a status update?---Yes.

And between July 2017 and May 2018 there were another 13 work in progress meetings at which Allianz asked for a status update?---Yes.

5

Did you attend those meetings?---No.

Who attended those meetings?---Members of the direct team. And – sorry, and – by phone members of the AWP team, sales team.

10

And it was a standing agenda item at each of those work in progress meetings?---Yes.

And no deadline was ever set in any of those meetings for the return of AWP's comments to Allianz?---No.

15

Then in June this year, the CEO of AWP, Craig Dalzell, sent you an email about what had happened over this period. Have you – do you recall that email?---Yes.

20 He attached a chronology of events?---Yes.

I will show you that email which is AZW.0001.0008.7606. It is – I'm going to the chronology which is an attachment to the email. Would it assist you if I showed you the email as well?---I'm familiar with it, yes.

25

You're familiar with the email. So this is the chronology that Mr Dalzell, the CEO of AWP sent to you on 7 June this year?---Yes.

And if we look at item 3, Mr Dalzell says:

30

On 24 November '16, the issues list was sent to AWP.

?---Yes.

35 Then item 4:

22 December '16 it was sent by AWP sales to AWP legal.

?---Yes.

40

Then in the fifth item we see that there was some disagreement between AWP's legal team and Allianz's legal team. What was the nature of that disagreement?---I don't know.

45 Then nothing happened for a long time, according to this chronology, until June 2017 when AWP sent the issues list and Allianz's comments to an external law firm for review. Do you see that?---Yes.

So Allianz had spent eight months reviewing the website, and AWP and its legal team had had a further six months to review it. And then they asked another law firm to review it as well?---Yes.

5 And we see from item 7 that in February this year that law firm completed its review? Do you see that in item 7?---Yes.

And then AWP's legal team had to review their feedback. Do you see that in item 7?---Yes.

10

And in March 2018, AWP finally produced a version of the website showing the changes that were needed. We see that from item 8?---Yes.

You tell us in your statement that that was given to Allianz in May this year?---Yes.

15

And a member of Allianz's legal team then realised that the incorrect and misleading content that had been detected in 2015 had never been removed from the website?---Yes.

20 And he escalated the matter?---Yes.

But you told us that the issues list had been a topic of discussion at 14 meetings between July 2017 and May 2018?---Yes.

25 So someone at Allianz who had attended those meetings knew that the content had never been removed from the website?---Yes.

Why didn't the matter get escalated within Allianz before then?---I think it shows or demonstrates a poor understanding of the – our responsibilities in the AWP relationship.

30

What were the responsibilities of Allianz in the AWP relationship?---Well, it's our product, our licence, we're fully responsible.

35 And if we go back to the chronology, we see at point 14 that Mr Dalzell said:

Throughout the period from November 2016 until recent escalation, it is our understanding that this matter was never singled out as an urgent priority action item in the Allianz direct and AWP fortnightly work in progress meetings. And as noted in the ongoing Allianz direct AWP work in progress document. In the regular meetings which occurred between AWP and Allianz, other matters were discussed and prioritised over this item.

40

Is that a fair assessment of what occurred, Mr Winter?---I don't believe so, no.

45

How would you characterise what occurred?---While it might not be stated explicitly in the documents, I think any time that there's a work in – an items list that identifies

things that are misleading and deceptive and significant, it should be apparent to anyone involved that they need to be fixed with urgency.

5 So you think that AWP should have worked out that this was urgent?---Yes.

Despite you needing to convey that to them?---Yes.

10 Despite any need for you to convey that to them. They should have worked it out themselves?---Yes.

But you hadn't treated this as an urgent matter, had you?---No.

15 All right. I need to tender the chronology but before I do that, Commissioner, I need to tender an earlier document – I need to tender, I'm sorry, for completeness the email to which the chronology which is attached. The email is AZW.0001.0008.7604. And the email is dated 7 June 2018.

20 THE COMMISSIONER: Email of 7 June '18, AZW.0001.0008.7604 and its attached chronology AZW.0001.0008.7606 together will become exhibit 6.273.

EXHIBIT #6.273 EMAIL DATED 07/06/2018 AND ITS ATTACHED CHRONOLOGY (AZW.0001.0008.7604 & AZW.0001.0008.7606)

25 MS ORR: Thank you, Commissioner. Now, Mr Winter, before we move on I want to put some propositions to you. Allianz identified in December 2015 that there was incorrect and misleading content on the travel insurance pages of its website as well as other parts of the website?---Yes.

30 And in the period between December 2015 and May 2018, Allianz and AWP undertook a series of reviews that either identified additional misleading content or confirmed the results of the previous reviews?---Yes.

35 And over that whole period of approximately two and a half years, the incorrect, misleading and deceptive content was accessible to the public on your website?---Yes.

40 And not only did Allianz not take the offending parts of the website down, your evidence is that Allianz didn't consider taking those parts of the website down?---Not during that period.

Allianz didn't make any report to ASIC in that period?---No.

45 Neither Allianz nor AWP acted with any sense of urgency to fix the issue?---Yes.

Neither Allianz nor AWP appreciated the seriousness of the issue, did they?---No.

And every day that that website was accessible to the public, Allianz was contravening financial services laws?---Yes.

But Allianz did not care enough to fix it?---Yes.

5

You've worked at Allianz since 2001. Is that right?---Yes.

How would you describe its culture?---Its compliance culture or culture generally, sorry?

10

Well, is it a culture that takes compliance, compliance with the law, seriously?---Yes.

Where do we see that in this series of events, Mr Winter?---You don't.

15

It wasn't taken seriously enough to spend \$25,000 on a review of the website once it had been identified that it contained misleading representations?---No.

It wasn't taken seriously enough to report the representations to ASIC?---No.

20

It wasn't taken seriously enough for Allianz to want to take the offending parts of the website down?---No.

Or even consider whether it should do that?---No.

25

And it wasn't taken seriously enough to act with any sense of urgency to fix the misleading and deceptive statements on the website?---No.

Because taking down the website would have cost the business money and at Allianz it's more important to protect the bottom line than to stop misleading your customers?---I don't think it's more important to protect the bottom line. I think it should absolutely be more important to protect the customer.

30

Well, I want to put to you that the sequence of events that I've taken you to demonstrate that it was more important at Allianz to protect the bottom line than to stop misleading your customers?---Yes.

35

Do you accept that?---In this instance, yes.

Now, given the time that had passed between November 2016 when the issues list was given to AWP and May 2018 when it was discovered that nothing had been done, Allianz decided to engage an external law firm to do yet another review of the travel insurance web pages and the purchase paths. Is that right?---Yes.

40

And based on that review, you've set out in your statement a table of 39 statements from the travel insurance web pages that you consider may have been incorrect or misleading?---Yes.

45

I will take you to those 39 statements in your witness statement at ALZ.0001.0092.0001 is your statement. And I would like to go to 0013 in your statement. Now, 0013 is the first page of a table setting out the 39 statements. We can see that the table sets out a description of the incorrect or misleading content. Do
5 you see that?---Yes.

The date the content was introduced on to the website?---Yes.

10 And the date it was removed from the website?---Yes.

And the final column shows us the type of travel insurance policy that was affected by the misrepresentation?---Yes.

15 Now, if I take you first to the Date Introduced column, most of the dates in that column throughout this table are from 2012?---Yes.

20 So most of the misleading and incorrect statements about travel insurance on your website were not introduced when the website was updated in December 2015. They had been there since 2012?---Yes.

But they were not identified between 2012 and 2015?---No.

25 And when they were identified in 2015 we've seen that nothing was done to fix them until 2018?---Yes.

And some of those incorrect or misleading statements, therefore, remained on Allianz's website for almost six years?---Yes.

30 Do you have any observations to make about that, Mr Winter?---Yes. I think what it illustrates is that we haven't had a process of regular ongoing review of website content. So there's some failings in the document compliance and monitoring process and the supervision of agents that we're actually addressing at the moment.

35 I want to take you to just a few examples of the misleading content. I will ask you to look at item 3 in the table. We see that for three different policies since July 2012, the benefits table said that overseas medical assistance was unlimited, but it wasn't, was it?---No.

40 A sub-limit applied?---Two sub-limits applied. One was 15,000 for funeral cover and the other was 1000 for emergency dental.

Yes. And we see that item 3 relates to funeral cover and item 9 relates to the sub-limit for emergency dental cover?---Yes.

45 So it was wrong to tell customers that overseas medical assistance was unlimited?---Yes.

Does Allianz know how many people had their claims denied on the basis of those sub-limits?---There were no claims denied on the basis of the sub-limits. We're working through the impact to customers and we're quantifying that at the moment.

5 You're still quantifying the impact of these particular misrepresentations on customers?---We've engaged a third party consultancy, forensic accountants, to work through. We've completed that review for approximately 10 per cent of the group of customer claims during that period of – that the misrepresentations were made. So we're very – we expect to meet with ASIC shortly to propose a remediation program.

10 If we turn to item 19 on 0015. We see that since July 2012, the web page for the comprehensive travel insurance policy used the phrase:

Wherever you're travelling, whatever your needs.

15 Did the policy listed here, the comprehensive plan, apply wherever a customer travelled?---No.

20 There was an exclusion as we saw from the issues list for areas for which DFAT had issued travel warnings?---Yes.

Does Allianz know how many people had claims denied on the basis of that exclusion?---No.

25 When did Allianz take down the travel insurance pages of the website?---On 6 June 2018.

6 June this year?---Yes. I think that's the correct date. Yes.

30 It's the date that you give in your witness statement - - -?---Yes.

- - - Mr Winter. You say in your statement that:

35 *After the realisation in May this year that the incorrect and misleading content was still on the website, Allianz also identified that a similar issue could affect the purchase paths and not just the website.*

?---Yes.

40 So Allianz disabled its purchase path as well?---Yes.

And that happened on 12 June this year?---Yes.

45 Now, you tell us in your statement that during the period when the incorrect or misleading statements were on the website, AWP sold more than 600,000 Allianz travel insurance policies online and through its call centre?---Yes.

Is that figure correct?---Yes.

Now, I want to come back to that figure, Mr Winter. You don't know how many were sold via the website and how many were sold via telephone?---No.

5

You tell us in your statement that 22,450 claims have been made under those policies?---Yes.

Is that figure correct?---Yes.

10

Do you know how many of the people who bought travel insurance or made a claim under their travel insurance during that period were affected by the incorrect, misleading or deceptive representations?---No.

15

Do you know how long it's going to take Allianz to figure that out?---As I said, we're very close to meeting with ASIC to propose a remediation program. That's subject to ASICs approval. We would then – the way we're setting it up is that so we can actually issue refunds or cheques – additional claims payments to the customers without the customer needing to take any action. So I think once we have ASIC

20

Has Allianz contacted its customers to tell them about this?---Not yet, no.

25

Why not?---Well, we need to actually identify who has been affected before we would contact them.

When do you plan to let customers know that any of this occurred?---Following approval from ASIC in relation to the remediation program.

30

You don't know when that will be?---I expect that's going to happen very shortly, but I couldn't give you an exact date.

The travel insurance section of the Allianz website is now back up?---Yes.

35

And have you removed all the incorrect, misleading and deceptive statements from the website?---The only information that appears on the website relates to how to make a claim. All the other content is yet to be put back live.

40

I see. And the purchase path is operational again as well?---Yes.

Have the incorrect and misleading and deceptive statements been fixed in the purchase path?---Yes.

45

And whose responsibility was it to oversee that project?---Craig Dalzell.

The CEO of AWP?---Yes.

Have the people of Allianz involved in the failures to rectify the incorrect, misleading and deceptive content faced any disciplinary consequences as a result of this?---No.

5 No disciplinary consequences?---No.

Will they face any disciplinary consequences?---Well, we haven't got to that as a discussion yet.

10 Haven't considered that?---Not yet.

Now, Mr Winter, between December 2015 when the website refresh happened and May this year there have been quite a lot of changes at Allianz, haven't there?---Yes.

15 We will hear more about some of them from the next witness, Ms Callahan. But around November last year Allianz introduced a compliance transformation program?---Yes.

20 And part of the aim of that program was to change the culture at Allianz?---Yes.

And part of the program involved changes to Allianz's process for considering whether to report matters to ASIC as a significant breach of the law?---Yes.

25 A new committee was established, the breach review committee in May this year?---Yes.

And another part of the compliance transformation program involved the breach review committee reviewing open incidents. Is that right?---Yes.

30 And one of the breach review committee's first task was to review this incident about the travel insurance section on the Allianz website?---No, the – no, I don't think that's correct. I think the breach review committee, one of its first tasks was to review the integrated path matter that we've recently reported to ASIC.

35 Well, what happened on 21 May this year in the meeting of the breach review committee that was held - - ?---Sorry.

40 - - - on that date?---My apology. I was confused. Yes, in answer to your question, yes.

So the breach review committee was established in May?---Mmm.

And on 21 May it considered the events that I've taken you to?---Yes.

45 Is that right?---Yes.

You attended the meeting?---Yes.

And at that meeting, the committee decided to report the matter to ASIC?---Yes.

And on 4 June this year, Allianz notified ASIC?---Yes.

5 And could I take you to the notification. It's exhibit 17 to your witness statement.
ALZ.0001.0067.0010. This is the letter that was sent to ASIC by the head of
compliance at Allianz?---Yes.

It's a very brief letter?---Yes.

10

And in it the head of compliance said:

*Allianz has identified potentially misleading and deceptive content with respect
to the travel insurance section of the Allianz website.*

15

?---Yes.

And she went on to say in the final paragraph:

20

*We are currently investigating this matter and seeking confirmation of certain
information from the relevant business unit. We will provide further detail as
soon as we are able to.*

Now, Allianz sent another letter to ASIC about a week later, on 12 June this
25 year?---Yes.

You've exhibited that letter to your statement as exhibit 18, ALZ.0001.0067.0059.
Now, if we could have the final page of the letter on the screen as well, 0061, we will
see that the authors of this letter were you and Ms Callahan, Allianz's chief risk
30 officer?---Yes.

And on the first page, you and Ms Callahan gave a description of the breach?---Yes.

And then if we could take down 0061 and bring up 0060. We will see that at the
35 bottom of the first page and over into the second page, you said:

*We understand that the potentially incorrect statements on the website in
relation to travel insurance products have included statements which
represented that certain benefits were higher than provided for under the
40 policy document and product disclosure statement, were not appropriately
qualified in certain places where this was necessary (for example, certain
statements about benefits should have been qualified as being subject to
eligibility and other conditions set out in the policy); or were inconsistent with
other statements on the Allianz website (such as help statements) or in the PDS
45 and did not include certain required disclosures.*

Now, also on this page under the heading The Number or Frequency of Previous Breaches. Do you see that, 2.1?---Yes.

You said:

5

Allianz has reviewed its breach register and at this stage it has identified seven matters which may be considered similar to this breach. The earliest recorded in December 2011. These matters are currently being reviewed to verify details.

10

?---Yes.

Information about those seven matters is given by Ms Callahan in her statement. Are you aware of that?---Yes.

15

Were those the only other matters that Allianz considered similar to this breach?---Yes, to my knowledge, yes.

20

There were another six similar matters that Allianz had reported to ASIC over the period from 2011 to 2015, weren't there?---Yes.

25

So there were the seven matters referred to in this letter but you didn't refer to an additional six that had been reported to ASIC over that period. Do you agree?---Well, in drafting this response we obviously – there's a process involved. It would involve input from legal and I would have acted on the advice of our legal counsel in terms of what matters were relevant to this letter.

30

Do you agree that there were six other similar matters that had been reported to ASIC which you did not mention in this letter?---I can't be certain.

35

Do you recall 46 other similar matters that had not been reported to ASIC, also being drawn to your attention in a memo that went to the 21 May breach review committee meeting?---Yes.

40

Perhaps if we could bring up ALZ.0001.0071.9029. This is the memorandum prepared for the purposes of the 21 May 2018 breach review committee meeting?---Yes.

45

It's a memorandum dated the day before, 24 May?---Yes.

It's prepared by a corporate compliance officer?---Yes.

And it's addressed to Ms Davidson, the head of compliance and chair of the breach review committee?---Yes.

45

You also received a copy?---Yes.

And it was prepared for the purpose of the meeting on 21 May. Do you agree?---Yes.

5 Which was convened to consider whether this was a serious breach to be reported to ASIC?---Yes.

And if we turn to 9031, we see under the heading Is This a Significant Breach? And the subheading:

10 *The number or frequency of similar previous breaches.*

There's a table headed Similar Matter – Reported?---Yes.

15 See that?---Yes.

If we also bring up 9032 and 9033, we will see that there's six reported matters referred to in that table. Do you see that?---Yes.

20 Which were regarded as similar matters that had been reported to ASIC?---Yes.

Now, they related to incorrect PDS links on the websites of distributors of Allianz products?---Yes.

25 And other errors identified on the Allianz website and websites of those distributors?---Yes.

Over the period from 2011 to 2015?---Yes.

30 Yes?---Yes. If '15 is the latest date, yes.

Yes. And with the exception of the fourth matter in the table, which is the one relating to One Cover – do you see that on the left-hand side?---Yes.

35 None of the incidents were referred to in the letter to ASIC on 12 June?---No.

Should they have been?---Yes.

And then on the right-hand side under Similar Matters – Not Reported we see:

40 *From 20 November 2012 to 26 March 2018 there have been 46 website-related incidents raised in Tickit which either may not have been assessed for reportability or have been assessed and deemed not reportable.*

45 So 46 other similar incidents raised in your internal compliance system?---Yes.

Do you think it's important for Allianz to be honest and transparent in its dealings with the regulator, Mr Winter?---Yes.

Do you think it's important for ASIC to know about the number of previous similar incidents when Allianz reports a significant breach?---Yes.

5 So why didn't you and Ms Callahan provide ASIC with information about all these other similar website related incidents?---I think we took a decision to just note based on the major items listed in that table. So - - -

10 Just to tell ASIC about the major items?---The ones that had been previously reported as breaches, yes.

Well, we've identified that there were other matters that had previously been reported as breaches that you didn't identify in your letter to ASIC?---Yes.

15 Should you have?---Yes.

I tender the memorandum dated 20 May 2016, Commissioner.

20 THE COMMISSIONER: Memorandum for breach review committee incident breach website breach, 20 May '18, ALZ.0001.0071.9029, exhibit 6.274.

25 **EXHIBIT #6.274 MEMORANDUM FOR BREACH REVIEW COMMITTEE INCIDENT BREACH WEBSITE BREACH, 20 MAY '18 (ALZ.0001.0071.9029)**

30 MS ORR: Now, if we go back to the letter dated 12 June that you sent to ASIC, ALZ.0001.0067.0059. And we turn to the third page of that letter which is 0061 we see that you also told ASIC under the heading How Long The Breach Lasted:

35 *It appears that the incorrect travel insurance-related website content has been displayed on the Allianz website from around December 2015. Allianz is conducting further retrospective testing to verify that this date is correct for all content under review.*

40 So that was what you said to ASIC at this point about how long the information had been on the website?---Yes.

And on 20 June you got a response to this letter from ASIC?---Yes.

45 And if we go to that response at exhibit 19 to your witness statement, ALZ.0001.0067.0063, we see that ASIC asked Allianz to provide more information about its investigations into the matter by 20 July this year?---Yes.

Now, Allianz sent a response to that letter?---Yes.

Before I come to that response, I want to take you to some other documents that show what was happening at Allianz in June and July. You told us earlier that Allianz engaged an external law firm to review all of the website content?---Yes.

5 That law firm was Allens?---Yes.

And you told us that Allianz disabled the travel insurance pages of the website on 6 June and the purchase path on 12 June?---Yes.

10 Was that the result of a recommendation by Allens?---No.

Why was that? Why did you do those things on those two dates?---The pulling the website down? I made that decision based on the length of time and our failure to act.

15

You made that decision, Mr Winter?---Yes.

Based on the length of time and the failure to act?---Yes.

20 Now, there were a number of meetings between Allianz, AWP and Allens to discuss the issues about the website, weren't there?---Yes.

And in the course of those meetings, Allens raised concerns about whether there could also be incorrect or misleading statements on the websites of your partners, Allianz's partner websites?---Yes.

25

You gave evidence earlier that partners could be airlines, travel sites, financial institution websites. Is that right?---Yes.

30 Now, that was discussed at a meeting on 14 June this year?---Yes.

We've got the minutes of that meeting. If we go to ALZ.0001.0101.0028. Now, on the first page there we can see that there were representatives of Allianz, AWP and Allens at this meeting?---Yes.

35

And we can see that the minutes record that AWP at this point had 76 partners, 36 managed by Allianz and 40 managed by AWP?---Yes.

Does that accord with your understanding?---Yes.

40

And underneath that we see that partner landing pages are managed by the individual partners?---Yes.

But the partner purchase paths are managed by AWP?---Yes.

45

And if we go further into the document at 0031, we can see the minutes for two agenda items. The first being:

Discuss and agree quick fix for purchase path.

And:

5 *Discuss what is required to be actioned for partners.*

?---Yes.

Do you see that? And do you see in the main column the reference to:

10

Discuss the need to determine the necessary wording changes that are required to get the purchase path back online as quickly as possible.

?---Yes.

15

So now that the purchase path was offline, it was important to fix things quickly?---Yes.

20 Because every day that the purchase path was offline, Allianz and AWP lost money?---Yes.

So where was that sense of urgency when the purchase path was still online?---It wasn't there.

25 And underneath the part that I've just read to you, we see:

30 *CS outlined AWP plan to devote dedicated resources to reviewing and remediating partner purchase paths and partner landing pages. Partner landing pages may or may not contain misleading and deceptive content as this content is produced by each individual partner. Identified issues on the purchase path are likely to appear across most, if not all, partner purchase paths as the content is supplied by AWP. AWP will be guided by Allens review of Allianz direct when reviewing partner content. The AWP review of partner purchase paths and landing pages will be distributed to RV and LD who will provide to Allens. KH stated that the notification letter of the breach... was*
35 *confined to the issues concerning the content on the Allianz website. The notification did not deal with any other websites or pages which have the similar content that needs rectification.*

40 *It will be necessary to update ASIC on this matter when the facts are ascertained. KH stated that ASIC will ask when Allianz knew about other websites being affected and what steps it took when Allianz to limit consumer harm. There was discussion about the need to advise Allianz partners that there is potentially misleading content, how long it is going to take to fix it, and*
45 *what to do in the meantime. This may involve taking down the purchase path until rectified. It was agreed to determine the scope of changes on Friday, how long it will take and how many sites are affected. Allianz will then determine*

what steps it needs to be taken in respect of the financial institution partners it manages and AWP will do likewise.

5 So at this meeting on 14 June this year, Allianz determined that it was likely that the incorrect, misleading and deceptive content that affected its purchase path would also affect the purchase paths for its partners?---Yes.

All 76 of them?---Most likely, yes.

10 And Allianz was aware that it hadn't disclosed this to ASIC?---Not at that stage, no.

And it hadn't disclosed it to its partners?---No.

15 So at this stage, the direct purchase path had been taken down but the partner purchase paths were still up?---Yes.

Now, I will tender those minutes, Commissioner.

20 THE COMMISSIONER: Minutes of meeting concerning travel insurance web pages 14 June '18, ALZ.0001.0101.0028, exhibit 6.275.

EXHIBIT #6.275 MINUTES OF MEETING CONCERNING TRAVEL INSURANCE WEB PAGES 14 JUNE '18 (ALZ.0001.0101.0028)

25

MS ORR: There was another meeting between Allens, AWP and Allianz on 15 June?---Yes.

30 And one of the actions arising from that meeting was for AWP to provide a timeline for its reviews of the partner websites. Is that right?---Yes.

And that day Mr Dalzell, the CEO of AWP, sent you an email?---Yes.

35 We will go to that, AZW.0001.0010.3098.

THE COMMISSIONER: Can you give me the number again.

MS ORR: AZW.0001.0010.3098.

40

THE COMMISSIONER: Thank you.

MS ORR: Now, we see the email at the bottom of 3098 and over to 3099. In the final paragraph of that email, Mr Dalzell said to you:

45

My team will provide a work plan next Monday now they have all the changes required, covering both the Allianz website and all other sites in production.

5 *The issue of course is the speed of this fix. We will have exact details Monday but I remain of the view that we will be able to effect the required changes quicker than we will be able to bring down the websites with less impact. I would ask that we reconvene with this information to decide what the next course of action is. I am on the record about my views on this topic. So I don't take this as circumventing the need for strict compliance. It's not. I believe we don't have the information to make a decision until Monday about what to do next.*

10 So we see there that Mr Dalzell was expressing the view that it would be letter to leave the partner websites online?---Yes.

15 Even though Allianz and AWP knew that they most likely contained incorrect, misleading and deceptive content?---Yes.

15 He thought that fixing the content would have less impact than taking down the websites?---Provided we honoured the representations made, yes.

20 Less impact on what, Mr Winter?---The time taken to – I think he was – by the time he engaged with various partners have them pull their website down in the meantime they could be rectified.

25 He wasn't and couldn't have been talking about less impact on your customers, could he?---No.

25 He meant less impact on the bottom line, didn't he?---Yes.

He said:

30 *I don't take this as circumventing the need for strict compliance.*

but it was, wasn't it?---Yes

35 There was misleading information in the different purchase paths and he wanted to leave them online?---Yes.

And if we turn back to the first page, we can see that you responded to this email later that day. You said:

40 *Subject to resolving the point raised below and having visibility of the plan and time required to fix the partner sites, I support keeping them in place rather than shutting them down.*

45 That was your decision, Mr Winter?---Yes.

Were the partner sites shut down?---No.

Why not?---In between those emails I took advice and we made a decision based on the fact that we were going to honour the representations and rectify the sites in a short period of time.

5 You were aware that the partner sites contained misleading and deceptive information?---Yes.

And you made the decision not to take them down?---Yes.

10 I will tender that email chain, Commissioner.

THE COMMISSIONER: Emails to and from Dalzell, 15 June '18, ALZ.0001.0010.3098, exhibit 6.276.

15

**EXHIBIT #6.276 EMAILS TO AND FROM DALZELL, 15 JUNE '18
(ALZ.0001.0010.3098)**

20 MS ORR: During that time Allianz continued to investigate when the misleading content first appeared on the website?---Yes.

And if we go to AZW.0001.0001.0887 we see an email from Kathleen Harris, the executive legal counsel for Allianz to Gavin Byrnes, the general counsel for AWP.

25 You see that email, Mr Winter?---Yes.

Now, in the second main paragraph of the email, Ms Harris said:

Richard tells me that the following information is outstanding as at today.

30

And in paragraph (b) she says:

The date as to when the misleading content went on the AWP controlled P1 purchase path. We have reason to believe there was misleading material prior to 2015 and we are currently in the process of reconstructing the website at particular times.

35

You see that?---Yes.

40 So by 21 June there was reason to believe that there may have been misleading material on the website prior to 2015?---Yes.

Now, I tender that email chain, Commissioner.

45 THE COMMISSIONER: Emails between Harris, Byrnes and others AZW.0001.0001.0887, exhibit 6.277.

EXHIBIT #6.277 EMAILS DATED 21/06/2018 BETWEEN HARRIS, BYRNES AND OTHERS (AZW.0001.0001.0887)

5 MS ORR: Now, could I ask that you be shown ALZ - - -

THE COMMISSIONER: I should – sorry, there should be a date of those emails. 21 June '18.

10 MS ORR: Could I ask that you be shown ALZ.0001.0082.5704. I will give the number again in case that assists. It's ALZ.0001.0082.5704. This is a document provided by Allianz under a notice to produce issue provided to the Commission today. It's a short email so what I will do while it is coming up is read it to you and see if you're able to answer my questions based on that while it is coming up, Mr
15 Winter. It's an email from Michael Taig, T-a-i-g, to Kathleen Harris who we saw in the previous email, entitled forward Allianz travel pages July 2012.doc. So the subject line is the name of a document which is annexed to the email Allianz travel pages July 2012. And the email says:

20 *Kathleen, based on investigations to date using Wayback and DCSO records, we had defective information about Allianz travel product on the landing pages from day one in July 2012. Based on DCSO record but not verifiable at this stage, the purchase path was also defective.*

25 The email goes on to say:

30 *The detailed reconstruct will be undertaken with the following to be documented. I will be meeting with a group at 1 pm to confirm the parcel of work required to complete the full chronology of the defect. We will update you at the team meeting today.*

Now, Mr Taig was an executive general manager at Allianz?---He was until the end of last year and he has come back to assist with the Royal Commission preparation.

35 I see. His email records that on 21 June which is the same date as the previous email I took you to – on 21 June Allianz knew that the defective information about the travel insurance products had been on the landing pages from day 1 in July 2012. Do you understand that?---I do, yes.

40 Have you seen that email before?---No, I haven't.

But do you accept that Allianz knew from 21 June this year that the defective travel insurance information had been online since July 2012?---Yes.

45 Now, I will tender that document, when we're able to bring it up, Commissioner.

THE COMMISSIONER: The email Taig to Harris entitled forward Allianz travel pages July 2012.doc, ALZ.0001.0082.5704 – which now appears –

MS ORR: Thank you I will just give you a moment - - -

5

THE COMMISSIONER: - - - becomes exhibit 6.278.

10 **EXHIBIT #6.278 EMAIL TAIG TO HARRIS ENTITLED FORWARD
ALLIANZ TRAVEL PAGES JULY 2012.DOC (ALZ.0001.0082.5704)**

MS ORR: I will just give you a moment to read through that email, Mr Winter?---Yes, it says as we discussed.

15

Yes. Now, we mentioned earlier that the deadline that ASIC gave Allianz to respond to its request for more information was 20 July. You recall that?---Yes.

20 Now, in the lead-up to that deadline, which is after this email on the screen, there was another meeting between Allianz, AWP and Allens?---Yes.

And if we go to AZW.0001.0001.1234, we see the minutes for that meeting. Can I ask you firstly – you agree these are minutes of the meeting on 17 July 2018 between Allens, AWP and Allianz?---Yes.

25

You weren't present at this meeting?---No.

But you've reviewed this document in preparing to give evidence today?---I can't be certain. I'm sure I've looked at it, yes.

30

Can I ask you to look at 1235. In item 4 of the minutes we see ASIC Response. Do you see that:

35 *Subsequent to this meeting in the remediation process an ASIC response is required by Friday, 20 July.*

?---Yes.

And then:

40

Letter has been drafted by AAIL as consideration to provide non-specific response via joint AWP, AAIL statement.

AAIL is Allianz?---Yes

45

So the plan was to send ASIC a non-specific response to its request for information?---That's what the minute says. I'm not certain what they mean by that.

Okay?---What is meant by that.

I will tender those minutes, Commissioner.

5 THE COMMISSIONER: Minutes of meeting concerning Allianz direct travel claims remediation plan, 17 July '18, AZW.0001.0001.1234, exhibit 6.279.

10 **EXHIBIT #6.279 MINUTES OF MEETING CONCERNING ALLIANZ
DIRECT TRAVEL CLAIMS REMEDIATION PLAN, 17 JULY '18
(AZW.0001.0001.1234)**

15 MS ORR: And could I ask that you look at AZW.0001.0016.0761. We see that the day after the meeting, the minutes of which I've just taken you to, Lauren de Camp, a corporate solicitor for Allianz – you will see this in a minute, Mr Winter – sent an email to Matthew Clayton copied to a few other people at Allianz including Kathleen Harris. Do you see that?---Yes.

20 And Ms de Camp said in the first paragraph:

25 *We believe that it is important for the regulator to know when Allianz first became aware of an issue with website content. The Minter Ellison review in quarter 3 2015 notes issues with the proposed website content, in particular, around the use of the word “unlimited”.*

So Minter Ellison had reviewed the proposed new website content in the third quarter of 2015, and identified issues around the use of the word unlimited?---Yes.

30 So that was before the December 2015 update to the website?---Yes.

But the proposed new content was uploaded anyway?---Yes.

35 Using the word “unlimited” despite the concerns expressed by Minters?---Based on investigations I've completed, it looks like there were subsequent discussions between Minters and the internal lawyer. It didn't change the advice from Minters but I think it was indirectly approved by the internal lawyer following those discussions.

40 I see. I tender that email, Commissioner.

THE COMMISSIONER: Internal Allianz email of 18 July 2018 concerning travel insurance content, AZW.0001.0016.0761, exhibit 6.280.

45 **EXHIBIT #6.280 INTERNAL ALLIANZ EMAIL OF 18 JULY 2018
CONCERNING TRAVEL INSURANCE CONTENT (AZW.0001.0016.0761)**

MS ORR: Commissioner, I see that it's just after quarter past. I think I could finish with Mr Winter by about half past. It's a matter for you, Commissioner, as to whether - - -

5 THE COMMISSIONER: It's also a matter for Mr Winter. What would you prefer to do, Mr Winter, finish - - -?---I can stay all night if we need to. I would like to get it finished, please.

You astonish me. Go on, Ms Orr.

10

MS ORR: I want to come to the letter that Allianz sent to ASIC in response to the request for further information. You recall that the request for further information was due on 20 July?---Yes.

15 Did Allianz send a response by 20 July?---I don't know the date off the top of my head, sorry.

All right. Let's look at exhibit 20 to your statement. ALZ.0001.0071.9701. This is the letter that went to ASIC. We see that it's dated 20 July 2018?---Yes.

20

But it appears that it was sent on 23 July 2018. Does that sound right to you?---I'm not aware that that delay occurred.

All right?---I had anticipated it would have been done on the 20th.

25

Well, let's leave that to one side for now. We see it's dated the 20th - - -?---Yes.

20 July 2018. And if we turn to – perhaps if we could have both pages on the screen. We see on the second page that it was a letter signed by you?---Yes.

30

And on the first page you said:

We confirm that the investigation is still ongoing.

35 ?---Yes.

And over the page you provided some further detail?---Yes.

Under Continuing Investigation you said:

40

Allianz is currently in the process of investigating the number and monetary value of potentially disadvantaged customers whose claims were previously settled; the length of time in which the potentially misleading content was live on the Allianz direct web pages; and the content of any training materials that may be used by various partners to effect sale of travel insurance.

45

Do you see that?---Yes.

And in your previous letter to ASIC with Ms Callahan you had said that the incorrect travel insurance content had been on the website since around December 2015?---Yes.

5 But by the time of this letter, Allianz knew that it had been on the website for a much longer period. It knew that it had been on the website since day one in July 2012?---Yes, based on the memo you produced from Michael Taig.

10 So why didn't Allianz tell ASIC that it believed that there had been incorrect, misleading and deceptive material on the website before the date it had previously given of December 2015 and right back to July 2012?---I can't be certain. Had I have known of the – Michael's investigation I would have had a different date.

15 So do you say you were unaware when you sent this letter that the misleading and deceptive content had been on the website since July 2012?---Yes.

You were unaware?---I was not aware.

20 But others in your organisation knew that the material had been on the website since July 2012?---I would expect so, yes.

And you as the person representing Allianz in its dealings with ASIC didn't inform yourself of that material that was known to others in your organisation?---Yes.

25 On 30 August ASIC asked for another update from Allianz by 7 September. Is that right?---Yes.

30 And then on the day after that, ASIC sent Allianz a notice under section 912C of the Corporations Act?---Yes.

And that notice required Allianz to produce information about the misleading statements on the website and the purchase path?---Yes.

35 Including information about the periods in which those statements were on the website and purchase path?---Yes.

And Allianz responded to that notice 10 days ago, on 7 September?---Yes.

40 Could I ask that you look at ALZ.0001.0153.0021. Now, part of the response was this letter, a letter from you?---Yes.

45 And if we turn to 0022, we see that you told ASIC that the partner websites contained potentially incorrect or potentially misleading statements in relation to travel insurance products underwritten by Allianz, including statements similar to those originally identified in Allianz's letter to ASIC of 12 June?---Yes.

When did Allianz work out that this issue definitely affected the partner websites?---Quite quickly. Quite soon after we reviewed our own website and it became apparent that the content was still there. We looked at partner websites and it was pretty obvious that it was there as well.

5

So are you talking about back in May 2018?---I would say by the middle of June we had - - -

By the middle of June - - -?--- - - - completed those – that investigation.

10

Before or after your letter to ASIC dated 20 June? I'm sorry, 20 July – sorry, I have put that in a confusing way. You had a letter to ASIC on 12 June, and a letter to ASIC on 20 July?---Mmm.

15

Did you know that the issue definitely affected the partner websites before your letter of 12 June?---No.

Did you know before your letter dated 20 July?---I can't be certain. I don't think so. Otherwise I would have put it in the letter.

20

But you just told me that you thought you learnt that in the middle of June?---I'm sorry, I've got the dates confused.

You think that that was later?---Yes.

25

Now, further down in the letter, you told ASIC that the population of customers who purchased insurance through the Allianz direct purchase pathway was only about 10 per cent of the total sales of travel insurance made by Allianz and AWP?---Yes.

30

So does that mean that the potential number of affected customers could be 10 times higher than those identified by Allianz?---In the 912C notice to ASIC, I think we identify there's over two million policies sold during that period. It's – it's a longer period of time. Those affected would be a subset of that, but at the moment we haven't actually narrowed down to an exact number of impacted customers.

35

All right. Could I tender the letter to ASIC, dated 7 September 2018.

THE COMMISSIONER: Letter Allianz to ASIC, 7 September '18, ALZ.0001.0153.0021, exhibit 6.281.

40

**EXHIBIT #6.281 LETTER ALLIANZ TO ASIC, 7 SEPTEMBER '18
(ALZ.0001.0153.0021)**

45

MS ORR: Now, the other part of that response was a written statement responding to the matters in the 912C notice. That's ALZ.0001.0153.0024. And if we go to

0026 we see that this statement included a table setting out the 39 incorrect or misleading statements about travel insurance policies?---Yes.

5 And the dates on which those statements were first identified?---If you – by identified you mean actually when they were on the website, yes.

I'm sorry, the period in which the statement was made is the heading of the column?---Yes.

10 So the date – the date that the statement commenced being made on the website?---Yes.

Is that right?---Yes.

15 Now, so we see from this that 10 days ago, on 7 September, Allianz told ASIC that many of the incorrect, misleading and deceptive statements had been on the website since 2012?---Yes.

But this was known within Allianz since 21 June?---Yes.

20 And it was only in response to a compulsory notice from ASIC that this information was provided?---Yes.

25 And if we turn to 0035 we see that the response to ASIC in this statement also included another table in response to ASICs question about the remedial action that Allianz was taking?---Yes.

And the first remedial action referred to is the removal of the travel section of the website and purchase path from public view?---Yes.

30 And in the third column, we see that the purchase path was disabled on 24 August?---Yes.

35 But you told the Commission in your statement that the purchase path was disabled on 12 June?---I think 24 August captures both those points. So the purchase path was taken down earlier and the second point there, which is" instructed AWP to cease all digital marketing", we were only certain that that was in place by 24 August.

40 I see?---So we could state that clearly, separate the two points. The first one definitely by the 12th, the earlier date, sorry.

And the second one by 24 August?---Yes.

45 And at item 5 in this table, which is 0037, the table records that Allianz has undertaken investigations into the length of time in which the potentially incorrect or misleading content was live on the Allianz direct web pages. You see that?---Yes.

But you didn't tell ASIC here when that investigation had been completed, and Allianz ascertained that the misleading statements, many of them, had been on the website since 2012?---No.

5 Those investigations were completed on 21 June when we saw the email within Allianz, weren't they?---Yes.

And on page 0041 you responded to ASICs question about the number of policies issued between 1 December 2015 and 6 June 2018. Do you see that in paragraph
10 12?---Yes.

You told Allianz here that more than two million travel insurance policies were issued by Allianz and AWP during that period - - -

15 THE COMMISSIONER: Told ASIC, I think.

MS ORR: I'm sorry, I am not sure how I put that Commissioner. I wanted to say that you told ASIC - - -?---I knew you were talking about ASIC yes.

20 You told ASIC that more than two million travel insurance policies were issued by Allianz and AWP during that period, including about 280,000 through the Allianz direct pathway?---Yes.

25 Now, that's just in the period from 1 December 2015 to 6 June 2018?---Yes.

Not the whole period that the misleading and deceptive information was on the website?---No.

30 In your statement to the Commission, you said that only 605,585 policies had been sold during the whole period when the incorrect or misleading information was on the website. Do you recall that?---Yes. However, that 605 related to direct online policies and responded directly to the Rubric. Whereas this captures all travel policies issued by AWP during the period in question.

35 The question that you were asked in the Rubric, Mr Winter, was:

40 *For each type of policy affected by the potentially incorrect or misleading content relating to a range of insurance products, including travel insurance, identify the number of policies sold during the period when the potentially incorrect or misleading content was on the Allianz website.*

?---Yes.

45 And the answer that you gave was 605,585 policies?---Yes.

That was 1.4 million fewer than the total number of policies that you told ASIC were sold between December 2015 and June 2018?---Yes. If you go – if I could clarify that.

5 Yes, please?---Because I asked the same question myself. I have relied on Craig Dalzell for these – for the data here. In 53 of my witness statement - - -

Yes?--- - - - as I understand it, the direct - - -

10 Perhaps if we could bring this up to assist. ALZ.0001.0092.0001 at 0007?---Mmm.

Go on, Mr Winter?---Yes. So at the time, if we were going for the period from December 2015 through to the end of June as per this Rubric, we – my understanding is the data was related to the direct channel as it's set out in item number 53 of my
15 statement.

But, Mr Winter, the Rubric didn't confine you to December 2015 to June 2018. It asked for the number of policies sold during the period when the potentially incorrect or misleading content was on the website. We see that from 0023 in this
20 document?---Yes.

So is the figure recorded in your witness statement of 605,585 policies that we see at the bottom of the right-hand page of the screen incorrect?---I had personally verified that number and – sorry, inquired as to that number and made – to make sure it was
25 correct, based on looking at the most recently reported data. I am happy to say – I'm not happy to. I can acknowledge that it's not correct.

It's not correct. What should that figure be?---I would rely on the latest data reported to ASIC.
30

It's in excess of two million travel insurance policies that were sold during the period when the potentially incorrect or misleading content was on the website?---Yes.

That's another change we should read into your statement, Mr Winter?---Yes.
35

I have no further questions for the witness, Commissioner.

THE COMMISSIONER: Mr Lockhart, before you begin, there's a matter that I should raise with both counsel. As things stand at the moment, it may later be said
40 that there is some tension between what is said in paragraph 92 of Mr Winter's statement as affirmed by him at the outset of his evidence and what he later said about the nature and origins of the document which is tab 11 in exhibit MW02, which is document ALZ.0001.0067.2757. It is a matter entirely for you to determine whether it is necessary or desirable to take up any aspect of those matters with him. I
45 do not want you to be under any misunderstanding, that on the face of it, at least at the moment, it is possible that there may be some tension.

Now, if you wish to consider that overnight, of course, you should, and simply tell me and you may have that time. If you wish to announce now the course you will take, do. But it's a matter entirely for you, Mr Lockhart.

5 MR LOCKHART: We will consider it overnight, Commissioner.

THE COMMISSIONER: Then should Mr Winter remain in Melbourne overnight?

MR LOCKHART: Yes, I think he should, Commissioner.

10

THE COMMISSIONER: Yes. Very well. What time tomorrow morning?

MS ORR: I think it would be prudent if we started at 9.30, Commissioner. Thank you.

15

THE COMMISSIONER: I feared you might say that. 9.30 tomorrow morning then.

MS ORR: Thank you, Commissioner.

20

<THE WITNESS WITHDREW

[4.37 pm]

MATTER ADJOURNED at 4.37 pm UNTIL TUESDAY, 18 SEPTEMBER 2018

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