



AUSCRIPT AUSTRALASIA PTY LIMITED

ACN 110 028 825

T: 1800 AUSCRIPT (1800 287 274)

E: clientservices@auscript.com.au

W: www.auscript.com.au

TRANSCRIPT OF PROCEEDINGS

O/N H-959653

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

9.45 AM, TUESDAY, 27 NOVEMBER 2018

Continued from 26.11.18

DAY 66

MS R. ORR QC and MR M. HODGE QC appear with MR M. COSTELLO, MS E. DIAS, MR A. DINELLI, MR T. FARHALL, MR M. HOSKING and MS S. ZELEZNIKOW as Counsel Assisting

**MS W. HARRIS QC appears with MR D. THOMAS and MR M. SHERMAN for NAB
MR R. HOLLO SC appears with MS T. SPENCER BRUCE for AMP**

<CROSS-EXAMINATION BY MS ORR

5

THE COMMISSIONER: Yes, Ms Orr.

10 MS ORR: Commissioner, could I start by tendering the document that I referred to yesterday, which was the memorandum to the board entitled Culture, dated 5 November 2018, NAB.007.049.0092.

THE COMMISSIONER: That document becomes exhibit 7.88.

15

EXHIBIT #7.88 MEMORANDUM TO THE BOARD ENTITLED CULTURE DATED 05/11/2018 (NAB.007.049.0092)

20 MS ORR: Now, Dr Henry, I want to turn to the charging of adviser service fees and plan service fees in NABs Wealth business, which I am sure you heard Mr Hodge asked - - -?---Yes. Yes.

25 - - - Mr Thorburn some questions about this?---Sure.

Now, NAB subsidiaries, we know from NABs submission to the Commission, commenced charging plan service fees in about 2012?---Yes, I believe that's correct. Yes.

30 But adviser service fees had been charged from much earlier?---Yes.

From at least 2008?---2009, I think. Well, anyway, 8, 9, I'm not sure.

35 Thank you. And, in around the middle of 2014, NABs subsidiaries started identifying a number of issues in connection with the charging of both adviser service fees and plan service fees?---Yes. Yes.

40 And, in December 2014, one of NABs subsidiaries, MLC Nominees, reported a significant breach about these matters to APRA?---That's my understanding, yes.

And there was also a significant breach report to ASIC - - -?---To ASIC.

- - - at that time?---Yes. Yes.

45 Now, towards the middle of the following year, in June 2015, Louise Macauley from ASIC wrote to Andrew Hagger from NAB. And if we can bring up that letter, which

is exhibit 5.160, ASIC.0038.0009.4847. You have seen this letter from 5 June 2015 before, Dr Henry?---I'm sorry, I suspect I should have, but I can't – I can't honestly say that I have. That would be my fault, I'm sure, because I'm sure it was in a list of tender documents – or set of tender documents I was presented with.

5

Perhaps I could - - -?---But it's quite a short letter, is it? Can I - - -

Yes?---I read the first page.

10 It's a two page letter and we can easily put both pages on the screen at the same time?---Yes. Here we are. Yes. Surveillance. Yes. Okay. Yes. Sure. okay.

Perhaps if I direct your attention to some parts of this letter?---Yes.

15 At the time that this letter was received, Mr Hagger was the group executive for NABs Wealth business. We see that from the top of the document?---Mmm.

20 And we see in the second paragraph that Ms Macauley referred to ASIC recently having commenced investigations into Australian financial services licensees charging advice fees without providing advice?---Yes.

And, further down the page, she referred to the breach that had been reported to ASIC on 23 December 2014. Do you see that - - -?---Yes, I see that.

25 - - - reference?---Yes. Yes.

And she asked Mr Hagger to scrutinise – this is the following paragraph:

30 *...to scrutinise the operation of all of the AFS licensees that form part of the NAB Group which provide personal financial advice to retail clients to ascertain whether there are issues relating to incorrect charging of advice fees.*

?---Yes.

35

40 Now, do you think that you have not seen this letter before, Dr Henry?---I just can't recall it. I'm not saying I haven't seen it. Maybe I have. I've read, as you would imagine, some thousands of documents – or reread some thousands of documents over the past few days. This may well be among them. I – but it doesn't matter, really, I'm – does it? Maybe it does.

45 Well, I am interested in when this letter was brought to your attention for the first time, Dr Henry?---I see. Well, if it helps, I would be pretty sure I hadn't seen it before, let's say, last week, but I – again, I could be wrong. My memory could be failing me.

So you don't recall seeing it before last week?---I don't.

All right. Now, I want to – I've been taking you through a chronology of events?---Yes. Yes.

5 We're in the very early stages of that chronology. We're in June 2015. But I do want to pause in the chronology for a moment and ask you some questions about what was happening in the business at this time, in the middle of 2015?---Mmm.

10 Now, at that time you weren't yet chair of the board. Is that right?---That's correct.

But you were the chair of the board's risk committee?---Risk committee. Yes, that's correct. Yes.

15 And could I ask that you look at NAB.094.001.6778. Now, this is a memorandum prepared by, if we could have both the first and second pages on the screen, you will see that it was prepared by the General Manager Group Operational Risk and Compliance, for a meeting of the risk committee in May 2015. So shortly - - -?---Yes.

20 - - - prior to the letter that I've just taken you to?---Yes.

And we see on the first page that the purpose of the memorandum is to highlight where the group has been operating with respect to - - -?---Yes.

25 - - - compliance risk appetite?---Yes, that's correct. Yes.

Now, compliance risk is defined in the second paragraph of this document as:

30 *The risk of failing to understand and comply with the laws, regulations, licence conditions, supervisory requirements, self-regulatory industry codes of conduct, as well as related internal requirements such as policies, procedures, organisational frameworks and standards.*

You see that?---Yes.

35

In the paragraph underneath that definition of compliance risk, we see the following statement:

40 *The group has no appetite for non-compliance with legislation in the jurisdictions in which it operates or the voluntary codes it subscribes to as articulated in the FY15 group risk statement.*

The memorandum goes on to say:

45 *The group's compliance risk performance has been rated red.*

I will just – we will need to pan back so you can see that. Underneath the heading Compliance Risk Performance Status Update:

5 *The group's compliance risk performance has been rated red over FY14 and first quarter of FY15.*

Now, this was something you referred to yesterday, Dr Henry?---Yes. Yes.

10 What did it mean at this time for compliance risk performance to be rated red?---At this time, and I think it's still the case, that a – a red risk rating against compliance – not so much regulatory risk, but compliance risk, refers to a breach of one of those – any one of those compliance obligations.

15 When you say any one of those compliance obligations, are you referring to the matters within the definition of compliance risk?---Yes. Yes.

Failing to understand or comply with the laws, regulations - - -?---Yes.

20 - - - licence conditions, matters of that nature?---And also internal policies, yes.

So a red rating for compliance risk performance is a very concerning matter. Do you agree?---Yes, it is. Though – I know you're aware of this – the board risk committee spent some time during the course of 2015, and it's reflected in a risk committee minute late in 2015, if I recall, considering whether it was realistic to imagine that an
25 organisation with thousands of individual compliance obligations could ever realistically not be in compliance breach. And it's extraordinarily unlikely. And – that there would not be a red risk rating against compliance. I think in our so-called APRA self-assessment document you – which I know you've read – you will see that
30 we identify more than 14,000 individual compliance obligations in the bank. It would be quite extraordinary if there was any point in time in which at least one of those compliance obligations was not being complied with. So that means that the compliance risk rating would normally be red. That doesn't – one of the challenges we have – and we made this clear to management in 2015, through the risk
35 committee – is the fact that the compliance risk rating is always red should not be dulling anybody to the importance of these matters.

When will it be amber then? If you say a single compliance breach takes you into red – your system, as I understand it, has three categories, green, amber and red.
40 How does that work when you say a single breach would tip you into red?---It would have to be – it would have to be a breach that's regarded as material. And the materiality threshold depends upon the category of the compliance risk that you're talking about. So – and I – I don't have all of that in my head, I'm sorry. I wouldn't be able to answer the question about materiality with respect to various categories of compliance, but there are materiality thresholds that would be satisfied. I think – I
45 think that – I think it's the case that in all the time since, and despite the fact that the – the board, particularly through the board risk committee, has been talking to management about the importance of improving compliance risk management. I

think it's the case that the rating has been amber in one month, I think, in that entire – what is it – four – four-year period, or three-year period, anyway.

5 And it - - ?---That doesn't mean that we are tolerating compliance risk breaches. After all, as this memorandum makes clear at the start, we actually have a zero tolerance for compliance breach. But that doesn't mean that we expect that there never will be a compliance breach.

10 But how does it work? You say you have no tolerance for that? But you also say that for a three-year period it was rated red?---Yes.

15 What do we make of that?---Yes. So what we make of that is that if there is a compliance breach, it is something that has to be managed. We cannot be comfortable with a compliance breach, because we have no – no tolerance for it. It has to be managed. But we're not naive enough to imagine that there will not be compliance breaches.

20 Can I tender that document. I want to come back to it, but I want to show you another document first.

THE COMMISSIONER: Memorandum for NAB principal board risk committee 27 April '15, NAB.094.001.6778, exhibit 7.89.

25 **EXHIBIT #7.89 MEMORANDUM FOR NAB PRINCIPAL BOARD RISK COMMITTEE DATED 27/04/2015 (NAB.094.001.6778)**

30 MS ORR: Could I ask that you be shown NAB.030.003.3940. Now, this is another memorandum for the risk committee and the remuneration committee entitled Assessing Risk Management Performance in FY16?---Yes.

35 You will see at the bottom of the page it appears to have been prepared in December 2015?---Yes.

Could I ask you to look at the third appendix to this document, which is at 3945, which sets out rating guidance under the heading Compliance Risk – Risk Settings. Do you see this?---Yes.

40 And this document records that:

Compliance risk will be rated red when we have breached appetite and do not have an agreed plan to remediate the position.

45 ?---Yes.

Now, is that what a red rating meant throughout the period that you've been referred to?---Yes, I believe so. Yes.

5 So it wasn't just about the fact of a breach; it was about appetite being breached and there being no agreed plan to remediate the position?---That's correct, yes.

Right. I will tender that document, Commissioner.

10 THE COMMISSIONER: Memorandum for principal board risk committee and remuneration committee December 15, NAB.030.003.3940 exhibit 7.90.

15 **EXHIBIT #7.90 MEMORANDUM FOR PRINCIPAL BOARD RISK COMMITTEE AND REMUNERATION COMMITTEE, DECEMBER 2015 (NAB.030.003.3940)**

20 MS ORR: So NAB had been operating outside its risk appetite for compliance with no agreed plan to remediate that position for approximately three years, apart from the one month when this went into the amber rating. Is that right?---I think that's correct, yes.

25 All right. Now, could we go back to the document that we had on the screen earlier?---Yes.

30 Which was NAB.094.001.6778. And if we look at the status update towards the bottom of the page, and the reference to the red rating over FY14 and the first quarter of FY15, we see that the memorandum goes on to record that the red rating was the result of a number of matters?---Mmm.

Ongoing regulatory breaches in Wealth?---Mmm.

35 Was that a reference to the inappropriate advice issues that NAB was investigating through its Customer Response Initiative?---I think so, yes.

Yes?---The CRI, yes.

And conduct issues and associated remediation in the UK?---Yes.

40 Was that a reference to the mis-selling of the payment protection insurance by NABs UK business?---I believe so, yes.

And we see it was also due to:

45 *Investigations connected with market practices in relation to the bank bill swap rate and the foreign exchange rate.*

?---Yes. Yes.

And each of those matters ultimately resulted in NAB entering into enforceable undertakings with ASIC, and, in the case of the bank bill swap rate matter, paying penalties of \$10 million?---That's correct.

And there are also references to the red rating being due to issues in relation to NABs compliance with its anti-money laundering and counter terrorism financing requirements?---Yes.

So this was a set of serious compliance risk issues for the bank?---Well, yes.

Which were appropriately reflected in a red rating for compliance risk performance?---Yes.

And, as the chair of the risk committee at this time, did you regard that as acceptable, that the compliance risk had been rated as red, bearing in mind that that means no agreed plan to remediate these problems for the period of time that you've referred to?---Well, you know the answer to that question. No. You know I didn't regard it as acceptable and it's reflected in the minutes.

So this was – this was a situation with your approach to your appetite for compliance risk at this time in the middle of 2015?---Mmm.

Now, I want to come back to the sequence of events - - -?---Yes.

- - - in relation to the adviser service fees and plan service fees against the backdrop of these matters?---Sure. Sure.

And we left off that chronology in June 2015 when NAB received the letter that I took you to earlier from ASIC - - -?---Yes.

- - - that asked for a broader investigation at NAB - - -?---Yes.

- - - of whether there were issues - - -?---Yes.

- - - with incorrect charging of advice fees?---Yes.

Now, that letter having been received in June 2015, the adviser service fees issues were reported to NABs board for the first time in August 2015?---That sounds right, yes.

Could I take you to NAB.030.002.1709. This is a paper that the board received in August 2015 called Summary of Material Regulatory Engagement?---Mmm.

This is a style of document that the board received regularly to update it on NABs engagements with regulators. Is that right?---Every month. Every month. Yes.

And, on the second page, 1710, we see a reference under Conduct Investigations and Surveillance in the first paragraph to the bank bills swap rate matter?---Yes.

Do you see that?---I do.

5

And, in the next paragraph, we see a reference to ASICs foreign exchange investigation?---Yes.

And, in the paragraph underneath that, we see a reference to the Customer Response Initiative, dealing with inappropriate advice?---Yes.

10

And then, in the paragraph underneath that, we see the reference to adviser service fees?---Yes.

15 Continuing:

ASIC has escalated to enforcement its investigation of NAB Wealth breaches regarding overcharging of ongoing adviser service fees. The breaches relate to situations where clients requested the removal of advisers from their accounts, but where ongoing service fees continued to be charged and held within head office accounts. ASIC is not yet satisfied that the control failures are limited to operational processes of the issuing entities. They have requested that NAB scrutinise the operations of all AFSL entities within the group that provide personal advice to retail clients, to ascertain whether there has been adviser or advice licensee misconduct. Internal investigations are underway with a final response due to ASIC on 24 July 2015.

20

25

Now, this was the first time that this matter had appeared in a regulatory engagement report for the board?---I believe so.

30

But the report did not make it clear to the board that this was an issue that was being reported to the board for the first time. Do you agree with that?---Yes, I would agree with that. Yes.

And should it have done so, Dr Henry?---Yes, I think it should. Yes, I do think it should.

35

I will tender that document.

THE COMMISSIONER: Board memorandum concerning summary of material regulatory engagement, August 2015, NAB.030.002.1079, exhibit 7.91.

40

EXHIBIT #7.91 BOARD MEMORANDUM CONCERNING SUMMARY OF MATERIAL REGULATORY ENGAGEMENT, AUGUST 2015 (NAB.030.002.1079)

45

MS ORR: And before we leave that document, Dr Henry, in your view, did this document sufficiently impress on the board the seriousness of these events relating to adviser service fees and the engagement with ASIC?---I would say not.

5 Yes. Now, Dr Henry, have you reviewed the minutes for the meeting on 5 August 2015 where this regulatory report was considered?---I believe I have, yes.

10 Have you seen that the minutes record that the board noted this report and there was a discussion about other matters contained in the report, such as compliance with AUSTRAC requirements?---Yes.

But there was no mention in the minutes for that meeting of the adviser service fee issues?---Okay.

15 Would it assist if I show you the minutes before answering that question, or are you - - -?---I accept – I accept what you’re saying. I think that’s highly probable, anyway, so yes, I accept that.

20 Do you recall there being any discussion at that meeting of the adviser service fee issue?---Well, no, I don’t recall it. It’s not to say it didn’t happen, but I really don’t recall it. No.

You don’t recall it - - -?---No, I don’t.

25 - - - being drawn to the board’s attention?---Not specifically, no.

Or being the subject of any discussion?---I don’t recall that, no.

30 All right. Now, for completeness, Commissioner, I would like to tender the minutes of that board meeting, NAB.092.001.0653.

THE COMMISSIONER: What’s the date of the board minute?

35 MS ORR: The fifth - - -

THE COMMISSIONER: The minutes?

MS ORR: 5 August 2015.

40 THE COMMISSIONER: Minutes of NAB board meeting, 5 August ’15, NAB.092.001.0653, exhibit 7.92.

45 **EXHIBIT #7.92 MINUTES OF NAB BOARD MEETING DATED 05/08/2015 (NAB.092.001.0653)**

MS ORR: Now, on the same day as that board meeting, Dr Henry, the adviser service fees issue was also reported to the risk committee as part of a regular report by the chief risk officer. Yes?---Yes. Yes.

5 Could I show you that report from the chief risk officer, NAB.030.002.1732. This is another standard form of document, this being a regular report from the chief risk officer to the risk committee?---That's correct.

10 And this one is a report for 5 August 2015, risk committee meeting?---Yes.

Do you – yes?---Yes.

15 Now, could I take you to the second page of that report, 1733. We see that next to Wealth Financial Advice Investigations, the chief risk officer said to the risk committee:

20 *The high volume of regulatory inquiry and intensive resourcing required to deal to ASICs investigations into NABs Wealth advice business continues, with NAB Wealth responding to multiple notices. These relate to: (1) current and former advisers in relation to whom the licensees have had serious or other compliance concerns, (2) overcharging of ongoing advice service fees.*

And then there were some other matters listed there, including:

25 *Vertical integration and misconduct of various former advisers that had been notified to ASIC.*

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

30 And, at the bottom of that passage, there is a reference to the regulatory risk update in italics. Do you see that, Dr Henry?---Yes.

35 Now, if we turn to the regulatory risk update at 1739, we can see that the adviser service fees matter – the adviser service fees matter is listed as the last item on that page?---Yes.

Do you see that:

40 *NAB Wealth continues to respond to ASICs investigation of overcharging of ongoing adviser service fees. In regard to the breaches by the product issuing licensees, ongoing analysis in response to ASIC notices has estimated that approximately 12,000 customers were overcharged \$2 million in aggregate between 2007 and 2014. We expect ASIC will monitor communication and compensation payments to customers and issue a media release on the matter.*
45 *In response to a separate request by ASIC, NAB is investigating licensee revenue, compliance audit and –*

We will see over the page –

5 *complaint data, to identify where there has been misconduct by any of the group's advice licensees in regard to charging service fees where there has not been provision of service.*

?---Yes.

10 So, again, there was no indication, this time for the risk committee, that this was a new item?---No, that's correct.

No explanation of the background to the issue?---That's correct.

15 No explanation of the root causes of the issue?---Indeed.

Not even an explanation of the businesses that it related to?---True.

20 Nor the possible contraventions of the law that were involved?---Well, that's true. Yes. That's, perhaps, not so unusual, but that is true.

25 It's not unusual for the chief risk officer's report to not mention potential contraventions of the law?---Well, it depends when the issue is being raised and in what context issue is being raised. One of the – I'm sure you're going to get to this, but the – the practice, whether it's a sensible practice or not, is for breaches to be referred to ASIC, and then for discussions to occur between ASIC and people in the bank about the probable nature of the breaches. So – and just what sort of breach are we talking about and which parts of the law are we talking – are we talking about. So a view will be formed in NAB that there has been a breach brought to ASICs attention. ASIC may say, well, yes. Or it might say no. Or it might say there's another breach we're worried about.

30 For a breach to be reported by NAB, NAB needs to have formed the view that there has been or may have been a contravention of particular provisions of the law?---Yes. May have been is the important point there.

35 Well, it's one or the other. It might be that NAB has formed the view that there have been?---Indeed. And it might not.

40 But a record also needs to be made when they've formed the view there might have been?---Correct. That's what I'm saying. Yes.

You accept – yes?---Yes. So if you're saying should the chief risk officer have said, well, there may have been a breach of this – yes. Well, okay. Fine.

45 Well, isn't that something the risk committee should know, "This might contravene the law and these are the provisions that at the moment we're concerned might have been breached"?---Perhaps.

Why only perhaps, Dr Henry?---Well, go to – if you think about the BBSW matter that you referred to earlier – and that, of course, was raised with NAB by ASIC, and when it was raised with NAB there was a suggestion that various provisions of the law had been breached. And it is NABs view, and remains NABs view, that those
5 certain provisions have not been breached.

I understand that. I want to come back to the adviser service fees issue?---Yes.

Because surely someone within your business at that point was thinking about
10 whether this conduct contravened the law, and, if so, how it contravened the law?---Yes.

And, surely, those were matters that the chief risk officer should have reported to the risk committee?---Perhaps.

15 Back to where we started, “perhaps”, Dr Henry?---Yes, perhaps.

And I’m afraid I still don’t understand the reason for your hesitation?---No. I probably can’t explain it to you.

20 There was no reference in this report, Dr Henry, to the possible penalties for this conduct?---No.

There was nothing about any measures that were being taken within the business to stop the problem from continuing to occur?---That is true.

25 There’s nothing about how advanced NAB was in its investigation of these issues?---No.

30 And there was nothing about whether the 12,000 customers and the \$2 million in overcharging appeared to represent the full extent of the problem or just the beginning?---Indeed.

Were they - - ?---And, as we know, it wasn’t known at the time.

35 It was just the beginning, wasn’t it?---It really was just the beginning.

Were all those things that I’ve just taken you through, root causes, the businesses it related to, possible contraventions of the law, possible penalties, what we’re doing to
40 fix this, how far our investigation has advanced – are they all things that the risk committee should have been told by the chief risk officer?---I do think so, but can I – can I take you back to a point I made earlier. It has – it has typically been the case that those matters – or work on those matters has taken place after discussions with ASIC, rather than before discussions with ASIC.

45 Well, should that practice change, Dr Henry?---I think it should. Yes, I do. I really do.

So the risk committee should be advised of these matters at an earlier point in time before the ASIC notification. Do you agree with that?---I do. Indeed, I wonder whether it's necessary, in all occasions, to negotiate with ASIC at all, rather than simply notify and get on and fix it.

5

I'm sorry. I want to make sure I understand that answer. You wonder whether it's necessary to negotiate with ASIC at all?---Correct. Correct.

10 Are you talking there about – are you jumping ahead to the negotiations that ran for many years between NAB and ASIC in relation to adviser service fees and querying whether those - - -?---I'm including that, but I'm making a general point - - -

15 What?--- - - - about behaviour. And the general point about behaviour, as I indicated earlier, is that when a compliance breach is suspected - - -

15

Yes?--- - - - and – or it's discovered, so somebody is certain there has been a compliance breach, and it's significant – the practice has been to notify ASIC. And you've – this Commission has drawn attention to the fact that on numerous occasions the breach notification hasn't been provided in a sufficiently timely fashion. That's one issue. The other issue, though, is – which I'm referring to is that the practice has been to make the notification to ASIC, and then, effectively, negotiate with ASIC what the outcome should be. And what I'm suggesting is that, on reflection, and the board has been – the board has had quite a – has been quite reflective about these matters, particularly in relation to ASF and PSF. But, on reflection, that doesn't appear to be – and certainly would not always be the most sensible way to operate.

25

Well, it didn't serve you well in the adviser service fees and planned service fees issue, did it?---It did not serve us well. It didn't serve the business well, no.

30 So, looking back on that experience – and I want to take you through the events in a little bit more detail – but what do you say NAB should have done?---So, of course, I've asked myself that question many times. And, in particular, I've asked myself the question what should the board risk committee have done? What should the board have done? Of course, a board cannot and should not manage the business. That's almost axiomatic. But the board does have to be accountable, as I was saying yesterday, for the impact of the business, and including impact with regulators and with the community generally. And the board has to take responsibility for the reputation of the business. And there's absolutely no doubt that the reputation of NAB has been tarnished considerably by these matters and the way in which they've been handled by management. There's no doubt about that. And so I have asked myself the question – and the board has discussed this on a number of occasions – what should we have done differently? We all agree we should have done something differently. Honestly, I'm not sure exactly what and when. My feeling is, though, like, I wish that we had – that we had said to management – well, certainly two years ago, perhaps even earlier – that we had said enough is enough. Forget about negotiating with ASIC. Just do it. Now, the risk with that - - -

45

Do what, before you continue, Dr Henry?---Remediate customers.

Thank you?---Remediate customers. Do what's in the best interests of the customers, as I was saying yesterday.

5

Yes?---The risk with that, of course – and I reckon the Commission can help us with this. The risk with that is that, you know, we could undertake, of our own volition, a customer remediation program only to find in 10 years' time ASIC come along and says, well, we don't think you did a good enough job, and we find ourselves going through another remediation program or find ourselves in court. I would like to find a way of us being able to secure remediation without having to negotiate with ASIC, but to be able to do it in a way where we are protected from future ASIC action. And if the Commission can help with that, I think you would do us all a great service.

10

15 Why are you so concerned about future ASIC action? What about proposing a customer-centric remediation program - - -?---This is what we're doing.

- - - to ASIC. But it's not what happened with the adviser service fees - - -?---No, it's not.

20

- - - and planned service fees, is it?---No, it's not.

It's far from what happened?---Correct.

25 So if you propose a remediation program that is focused on customer outcomes and putting customers back in the position that they ought to have been in but for the misconduct of your organisation, is there really a threat of ASIC action that you need to worry about?---But – not in that case, but you've just described what we were doing. You've just described the negotiation process I'm talking about.

30

I was – I suggest to you very strongly that that is far from what you were doing, Dr Henry?---Yes. okay.

35 This was not a customer-centric remediation program. This was a remediation program that did not prioritise customer outcomes?---No, I do agree with that. But, nevertheless, supposing that that had been our intention – supposing it had – it may have taken years, nevertheless, to negotiate with ASIC. That's not good enough. It is not good enough that we submit our customers to that process, where it may take years to negotiate with ASIC - - -

40

Why do you think?--- - - - an outcome.

45 - - - that would take years? If you propose to ASIC a customer-focused remediation program that was designed to restore your customers to the position they ought to have been in, why do you think it would take years to negotiate that with ASIC?---Well, we might have a different view on what ought means from what ASIC has. And, for example – and you've seen it – you've seen it in the materials

relating to this case – that in some circumstances ASIC will say, well, this is an industry-wide issue. And we’re looking at NABs approach. We’re also looking at the approach of others. And we’re not prepared to tell you whether we’re happy with your approach or not. Keep going.

5

That seems a very unlikely scenario, Dr Henry?---I can tell you it’s quite a probable scenario.

10 That ASIC is not prepared to comment on your remediation proposal?---Not prepared to tell us whether it’s something that, when they’re industry-wide issues, they will be comfortable with at the end of the day. It’s almost like a – on occasions, it’s almost like that game that children play: you’re getting colder, you’re getting warmer.

15 Well, I want to suggest to you, from the documents that I will take you to, that ASIC was very clear in relation to adviser service fees, that the proposals that were being put by NAB were not adequate to address customer detriment?---Yes. There is – there is – I know there are documents before the Commission which indicate that that is the case.

20

All right. Perhaps if we could move forward in the sequence a bit. And you said at an earlier point in time, when you were reflecting or speaking of the reflection of the board and the risk committee on what it could have done differently throughout this process, that you weren’t sure what and when. And I want to make some suggestions to you as we go through these documents. Can I suggest to you, firstly, that both the board and the risk committee, in light of the reports that I’ve just taken you to about these matters at this time, should have asked for more information about these problems, the causes of these problems, and what was being done to fix these problems?---Fine.

30

Well, do you agree with that, Dr Henry?---I can understand your view, certainly, in retrospect, and I wish we had. Yes, I do wish we had.

35 So you agree that that should have been done?---Yes, I do.

40

All right. I will tender this document, Commissioner.

THE COMMISSIONER: Report of group chief risk officer, 5 August ’15, NAB.030.002.1732, exhibit 7.93.

45

EXHIBIT #7.93 REPORT OF GROUP CHIEF RISK OFFICER DATED 05/08/2015 (NAB.030.002.1732)

50

MS ORR: Dr Henry, have you reviewed the minutes for the meeting of the risk committee on 5 August 2015 at which this report, the report of the chief risk officer, was discussed?---I believe I have, but could you refresh my memory, please.

5 Yes. I will bring them up. They are NAB.0092.001.1247. Do you recall this document, Dr Henry?---Yes. Yes, I do.

10 And, if we turn to the second page, 1248, we see the part of the minutes that relates to the group chief risk officer's report that I've just taken you to. Do you see that?---Yes.

15 And the minutes record that the chief risk officer provided the committee with an update on recent engagements with APRA, ASIC and AUSTRAC. You see that?---Yes.

20 And then the minutes record questions from the committee on a number of aspects of the chief risk officer's report. Perhaps if we could – yes. And the chief risk officer's response to those questions. Do you see they are the next two parts of the document?---Yes.

25 And there is no mention there of any questions from the risk committee or response from the chief risk officer to the adviser service fees issue?---That's correct.

30 So do we take from that that the adviser service fees issue wasn't drawn to the attention of the committee during the meeting?---It's very probably the case. I can't say for sure, obviously, but it's very probably the case, yes.

35 And that the committee asked no questions about it?---That's very probably the case, yes.

40 Now, I asked you this question in relation to the board materials. Do you think that the information that the risk committee was given about the adviser service fee issue was sufficient?---In retrospect, no. I mean, looking at it with the benefit of hindsight, no.

45 Is the description that we saw in the chief risk officer's report about this issue representative of the sort of information that the risk committee still receives about incidents such as this?---It's a hard one to answer. You know, I mean, certainly – with respect to ASF and PSF, obviously not, but events have moved on. Your question is a hypothetical, I think - - -

No, it's not a hypothetical. I want to know if the information is still presented in a similar sort of way in relation to incidents in your current chief risk officer reports for the risk committee?---You're saying an incident such as – I think your question was an incident such as this, wasn't it?

I'm sorry, but in case I'm confusing you - - -?---Yes.

- - - which I suspect I might be - - - Yes.

5 - - - for a new incident, for a different incidents. I want to understand if the way this information was presented is still typical of the way information about incidents is presented to the risk committee by the chief risk officer?---It could be. It could be. I'm not – I'm not seeking to take issue with you here at all. It's – it certainly could be. There is a risk that that's the case, yes.

10 A risk that that's the case?---Yes.

And what about the earlier document that I took you to for the board, the regulatory report?---Yes.

15 Is the information that we saw in that document about the adviser service fee issue typical or representative of the sort of information, content and length that's provided to the board in the regulatory reports these days?---They're getting longer.

20 Are they providing any more of the sorts of information that I've directed you to?---I hope so. But I – I hope so.

25 Only a hope, Dr Henry? You can't say whether it is the case?---I think the – you know, the – the problem – one of the problems here is that with the benefit of hindsight, it's – it can be clear to a board, as it is in respect of ASF and PSF. It's clear to the board now. What does trouble me, of course, is that there could be something – a new issue that management has become aware of and which has been brought to the board's attention, but not in a sufficient – not in a way that would satisfy the – well, the tests or the requirements – the expectations that you listed earlier, which I think are very reasonable expectations. It's possible.

30 Because you still receive those regulatory reports - - -?---Of course, yes.

- - - on a monthly basis?---Yes, we do.

35 But you cannot say to the Commission that this sort of problem with inadequacy of information has been fixed in those reports?---I certainly hope it has been fixed, but, you know, there is always a risk that issues are not being elevated to the board at the appropriate time and in the appropriate form. There is always that risk, of course.

40 Do you think more needs to be done at NAB to address that risk, Dr Henry?---Well, we have done a lot more, as you know. And I'm sure it is the case that more does – does need to be done. And, as you know, we have – we have, for example, increased the number of compliance resources in the business. I wouldn't be at all surprised if over the next little period – let's say 12 months or two years – we find that we – on assessment, that we should be increasing the number of compliance resources.

45 And what I'm asking you about is not about compliance resources in the business; it's about the information - - -?---Yes, I understand.

- - - that finds its way to the board?---No. I understand. I understand, but, you know, there have to be – presumably. there are reasons why information is finding its way to the board – sorry – information is not finding its way to the board in a sufficiently timely fashion, or – or in the manner in which it is finding its way to the board. My
5 sense of it is that – but it is a sense. I can't give you the hundred per cent guarantee that you seem to be after, but – and I would love to be able to do that, obviously, as chairman of the board. But my sense of it is that right now there is a much heightened level of awareness across the executive leadership team at NAB, particularly – particularly in the areas of risk and – in fact, all dimensions of risk, but
10 also compliance and regulatory compliance and also, as I said yesterday, conduct. That's my sense of it. And I do see it – I see evidence of it in the behaviour of the senior executives, and in the quality of the conversations that we have. We have, as a board, open conversations with management about these issues now, as distinct from closed conversations – you understand the distinction. And – so I think there's
15 a culture of openness and engagement and common ownership of problems. There are many reasons for that, one of which is that the board late in 2015 – or at least the board risk committee late in 2015, expressed considerable frustration with the poor compliance record of the business as revealed in the – the red compliance risk rating that you referred to at the start of this session. And we made the point, but really to
20 underline the point, that the board takes these matters very seriously. And, you know, because we have a zero tolerance for compliance breaches, there ultimately have to be consequences of some sort.

Well - - -?---But the issue is culture.
25

THE COMMISSIONER: Can I – sorry. Finish your answer, Dr Henry. I didn't mean to cut you off?---I'm sorry. Yes. I'm sorry. I was just going to say the issue is really a cultural issue.

30 Well, apropos of that, and to revert to a topic that was discussed five or 10 minutes ago, is it important, when either there has been or may have been a breach of financial services law that's a material breach that the entity – in your case NAB – take primary responsibility for deciding what should be done to fix what has happened?---Yes. Yes.

35 And does that entail two things: (1) not waiting for ASIC?---Yes.

And (2), acting in an ideal world, for reasons that are obvious to us both, hoping that ASIC is in the same paddock you are?---Yes.

40 But, regardless of the expressed view of ASIC, that the entity takes primary responsibility for what it believes - - -?---Yes.

- - - has to be done to fix it?---That is very strongly my view, Commissioner. And
45 the board has discussed that on a number of occasions, specifically in respect of ASF and PSF. We've learnt a lot.

But it leaves primary responsibility, therefore – yes, ultimately with the board – but primarily with the business. That the board is expecting the business (1) to identify - - -?---Yes.

5 - - - (2) to identify in fact what has happened, as well as what might have happened - - -?---Yes. Yes.

- - - and (3) then decide, “Well, what is to be done to fix it and how do we do it?”?---I agree with you 100 per cent.

10

Yes?---I agree with you 100 per cent. I think our habit – and it is a habit – of going to ASIC and seeking to negotiate an outcome with ASIC, I think that has led to elements of dysfunction. And it has certainly contributed to an insufficient pace of remediation for customers. It has. And I’m not happy with it. And the board is not
15 happy with it. And we do have to find a different mode of behaviour.

But it also – it also leads to the mindset, “Well, what’s the best deal we can do with ASIC”?---Exactly. Exactly.

20 And - - -?---It’s a deal, because it’s a negotiation.

Yes?---It’s not right. It is not right. And I don’t know one – you know, in other areas of the law, as you would be familiar, there are other approaches that are followed, one that has – well, I’m – I have insufficient expertise in this matter, but
25 you certainly have sufficient. But, you know, I have wondered whether in this case NAB should not have, years ago, funded some of our customers to take us to this place, to this Federal Court and get an outcome.

MS ORR: To sue NAB?---Yes. It happens in other cases. As you know, I was for
30 10 years treasury portfolio secretary. The Commissioner of taxation behaves in this way quite a lot. He has a budget to fund lawsuits against himself, in that case to provide law clarification – clarification of the law without having to, you know – anyway. And – and I have wondered whether – I mean, I don’t know. But it’s something that I have wondered whether, in retrospect, we shouldn’t have done
35 that - - -

Why should?--- - - - to get early clarification.

40 Why should it come to that, Dr Henry? If management and the board are doing their job, why should you need someone to sue NAB so you can sort these things out?---Okay. So the question is is the law sufficiently clear that anybody can come to that view? That’s the question. Who knows?

45 THE COMMISSIONER: Well, can I just tease that a little. The triplet which I never get in the right order in 912A is honest, efficient, fair?---Yes.

Those ideas are ideas of disarming simplicity. The board, above all else, will have its view, will it not, about efficient, fair and honest?---Yes.

5 And if what has happened contravenes that standard, does it not follow inexorably that something needs to be done about it?---It seems simple when you say it. It's pretty challenging, really, for boards. It is pretty challenging. And maybe that's – maybe that's it. Maybe it's as simple as that. But, as you know, in these businesses there are large numbers of people who are engaged in regulatory compliance, there are legal teams, there are people who deal every day with ASIC discussing these
10 matters and – and what the requirements of the law really are. And the board will have a view on those matters. But is the board's view always on those matters going to be the view that ASIC agrees with or which a court would agree with? I don't know. But I do think that, increasingly, boards are asking themselves that question. And certainly the NAB board is. And you will see that appears in some of our
15 minutes, where we have actually put back to management and used those precise words that you will find in the Corporations Act, 992A – put back to management that question. And I think you will see boards doing more of that. That's probably all I can say on that - - -

20 MS ORR: Well, why aren't they doing it now, Dr Henry?---There's an expectation, I guess, that management is doing it in the interests of the corporation, and that what – what management needs from the board is guidance on particular issues, but not every matter. And the risk here is that, which – which you have raised this morning, is that management will have taken a view before a matter gets to the board about
25 how the matter might be presented to the board. And I'm not – you know, I'm not suggesting that there's any ill intent involved in that; it's just a matter of fact that not every matter gets presented to the board in a way that would alert the board to the importance of that question. That's all.

30 And this is one of those matters?---I think it is, yes.

Could I tender the minutes of the risk committee meeting on 5 August 2015, Commissioner.

35 THE COMMISSIONER: NAB.092.001.1247, exhibit 7.94.

**EXHIBIT #7.94 MINUTES OF THE RISK COMMITTEE MEETING DATED
05/08/2015 (NAB.092.001.1247)**

40

MS ORR: So I've taken you to documents about what was happening in August 2015, Dr Henry. In December 2015, two of NABs subsidiaries, MLC Limited and MLC Nominees reported significant breaches to ASIC in relation to the plan service
45 fees issue?---Mmm.

Now, again, I want to pause in the chronology there at the end of 2015. It was December 2015 when you became chair of the board?---Yes, that's correct. Yes.

5 And at that time, Mr Armstrong took over from you as chair of the risk committee?---That's correct, yes.

And, in the first half of the following year, 2016, APRA conducted a series of prudential reviews of NAB?---Risk governance reviews, I believe.

10 One of them related to risk governance and the other related to compliance and remuneration?---Remuneration, yes, that's right. Yes.

I want to ask you a bit about both of those?---Yes.

15 If we go to the risk governance review first, NAB.007.002.0008. So this is a letter to you - - -?---Yes.

20 - - - dated 28 April 2016 from APRA regarding its prudential review into risk governance matters at NAB?---Yes.

And we see from the third paragraph of this letter that APRA explained why it was conducting this review:

25 *For some time now APRA has had a view that NAB has been more vulnerable to breaches and prudential issues than peers. APRA recognises and acknowledges the positive steps that NAB has taken in recent years to strengthen its risk governance. However, we are of the view that there is further to go. This has led to our focus on NABs risk governance framework this year.*

30 Now, if we turn to the report annexed to this letter and we turn to 0011, we can see that APRA required NAB to make a number of changes as a result of this risk governance review. Do you see that?---Yes.

35 Continuing:

40 *In summary, APRA requires that NAB develops and implements a plan to address the specific findings in the report and to achieve the following overall outcomes.*

?---I do.

And there were three overall outcomes referred to there. NAB needed to develop:

45 *...an effective risk appetite framework that provides clear and prudent limits on management risk-taking and which is enforced through proactive management of the bank's risk profile.*

?---Yes.

NAB needed to develop:

5 *...clearly defined roles, responsibilities and accountabilities for risk management.*

And NAB needed to develop:

10 *...monitoring and reporting at the board and management risk committee levels that provides comprehensive, transparent and forward-looking assessments of risks relative to risk appetite.*

15 Those were the things that APRA required NAB to do as a result of this risk governance prudential review?---Yes.

Now, I've already asked you about some of the shortcomings in relation to the information that was being presented to the board about risk issues - - -?---Yes.

20 - - - in this period?---Yes.

What changes did NAB introduce to address these issues?---A lot. There was a huge program of work that was implemented. We called it Project Cornerstone – or management called it Project Cornerstone. The – ultimately, the quality of the reports coming to the board risk committee contained a lot more detail, considerably more granularity, showing where various parts of the business were operating with respect to risk boundaries, where the gaps were, clearer definition of responsibilities. These, as you would know, the – the elements of risk that we're talking about here are not the same as the elements of risk that we were talking about earlier in respect of ASIC. Quite different. But, nevertheless, absolutely important to the running of the business and to the oversight of risk provided by the board risk committee and ultimately the board. A lot of granularity. I think – I think there are well over 100 risk limits that are identified now in the group chief risk officer's reports every month as a consequence of Project Cornerstone.

35 Can I tender that document, Commissioner.

40 THE COMMISSIONER: Letter from APRA to Henry, APRA prudential review, risk governance, 28 April '16, NAB.007.002.0008, exhibit 7.95.

EXHIBIT #7.95 LETTER FROM APRA TO HENRY, APRA PRUDENTIAL REVIEW, RISK GOVERNANCE DATED 28/04/2016 (NAB.007.002.0008)

45

MS ORR: Dr Henry, did the improvements that you've just spoken of focus largely on financial risks?---Largely, but not – not entirely. There were non-financial risks in there as well, operational risks, identified.

5 But was enough done to improve oversight of non-financial risks?---Oversight – certainly the quality of information coming to the board – to the board risk committee and to the board as a result of Project Cornerstone in respect of non-financial risk, it improved. But did it improve sufficiently? It's a good question. We continue to have gaps in our non-financial operational risk performance. So
10 that's a continuing piece of work. We have – as the Commission knows, we took a decision – well, more than 12 months ago – that we needed to spend a lot more money in improving the – effectively, industrialising the strength of our systems so that we could have better reporting of – and not just reporting, so that we could be assured that there was better management of non-financial risks in the business,
15 including data quality. We're spending – well, we spent an additional \$500 million last year, and again we will this year, and in the following year, that's directed precisely to – to those things. So we have – we do have further to go, but this project certainly helped. Project Cornerstone certainly helped in identifying the areas that needed attention.

20

The second review that APRA completed in that first half of 2016 was a compliance and remuneration review?---Mmm.

25 Now, can I take you to that document, NAB.007.002.0016. Now, in the third and fourth paragraphs of this letter APRA explained why it was conducting this review. If we could expand those for you. We see that APRA said:

30

Over the past few years, APRA has observed a significantly higher number of breaches of prudential standards –

For NAB?---Yes.

Continuing:

35

...relative to peers. NAB internal audit has also identified material concerns with the bank's management of compliance and a number of compliance controls appear to be ineffective. This impacts the confidence that we can place in NABs ability to control its risk profile. More to the point, it also impacts the bank's ability to consistently meet APRA's standards. The purpose of APRA's prudential review was, therefore, to better understand NABs internal frameworks, and assess their effectiveness in incentivising and driving the right risk behaviours within the bank. On compliance, our focus was on identifying the root causes of past breaches. On remuneration, the review was an opportunity to assess how effectively risk is factored into remuneration arrangements, which should encourage behaviour that supports and drives a strong risk culture.

45

?---Yes.

Now, over the page in its Summary of Findings at 0017, APRA said under Summary of Findings:

5

In APRA's view, an effective compliance framework should establish and maintain reliable controls that can detect and prevent breaches. The series of past control failures suggest that NAB is not yet operating with the level of reliability it needs both to meet its own risk appetite for compliance and to meet APRA's expectations of an advanced bank.

10

And, further down – two paragraphs down:

15

Remuneration has a key role to play in supporting compliance and risk management and in shaping the bank's risk culture. While risk is factored into NAB's remuneration arrangements, it is not clear how effectively it is embedded. And we have identified a number of areas in which NAB's approach should be strengthened. This includes risk adjusting financial performance measures and ensuring that there is sufficient weight on risk and clarity on accountabilities within score cards. The structure of remuneration for the group chief risk officer should also reflect the distinct responsibilities of the role.

20

That was a summary of what APRA found?---Yes.

25

And if we turn to the report itself, we see that APRA set out its findings about compliance and remuneration separately at 0019 in relation to compliance. APRA said:

30

In summary –

This is under the heading Compliance –

35

the findings indicate that compliance controls need to be tightened to meet the standard that APRA would expect of an advanced bank.

40

What was your reaction to receiving these findings from APRA about compliance and NAB's failings to meet the standards that APRA expected of an advanced bank?---Well, it was no surprise. The findings came out of a piece of work that APRA conducted inside NAB and by talking to people inside NAB about the effectiveness of NAB's own controls. So it was no surprise. Concerning. Absolutely concerning, but not a surprise. And – and motivating, too, because it certainly motivated a good deal of action, as you're aware, including in putting more emphasis on risk-adjusted financial performance metrics, most notably return on allocated equity in the – the bank's overall performance. But also in ensuring that all material risk-takers in the bank and that – and certainly all the senior executives in the bank had risk objectives firmly in their scorecards or performance plans. We've changed

45

the name of those things recently, but – and so – and we did change the structure of the remuneration for the chief risk officer, as well.

5 Can I - - -?---So it was motivating. It was helpful. It wasn't surprising. It was concerning.

Can I come to what APRA said about remuneration?---Yes.

10 At 0022. In the first paragraph, APRA said that:

Overall, there is significant scope for NAB to more effectively factor risk into remuneration arrangements, to drive a stronger risk culture and clearer accountabilities and expectations within the bank.

15 And, in particular, under the heading Risk Incentives, APRA said:

APRAs expectations on remuneration arrangements are set out in CPS 510. This standard states that performance-based components of remuneration must be designed to align remuneration with prudent risk-taking. To achieve this, financial performance metrics should be adequately adjusted for risk, risk management should have sufficient weighting in scorecards, and risk management expectations should be clear and measurable. In APRAs view, NABs current approach does not yet adequately meet this standard and lags peers in some respects.

25 Do you accept those findings? Again, unsurprising findings?---Indeed, unsurprising.

And, in the next paragraph:

30 *Effective remuneration arrangements should include adjustments for risk. For NAB senior executives, performance is measured primarily by reference to cash earnings, return on equity and net promoter score, with an overlay for leadership criteria. Long-term incentive plans are based on relative total shareholder return. There is, therefore, a heavy emphasis on profitability measures in individual performance assessments, and unlike peers, there are*
35 *no risk-adjusted measures of profitability.*

40 You accept that that was an accurate characterisation of your remuneration framework at that time?---Well, yes, I mean, that's what we told APRA. Yes, of course.

45 So APRAs view, in summary, was that NABs remuneration arrangements weren't operating as they should to support the prudent management of risk at NAB?---That was their view, yes.

And that NABs compliance arrangements fell short of the standard that APRA would expect of an advanced bank?---That was their view. Certainly.

All right. Now, could I tender that document, Commissioner.

THE COMMISSIONER: Letter APRA to Henry concerning APRA prudential review compliance and remuneration, NAB.007.002.0016, exhibit 7.96.

5

EXHIBIT #7.96 LETTER APRA TO HENRY CONCERNING APRA PRUDENTIAL REVIEW COMPLIANCE AND REMUNERATION (NAB.007.002.0016)

10

MS ORR: Now, returning back to our chronology in relation to adviser service fees, Dr Henry?---Right.

15 I've taken you to these documents in the first half of 2016?---Yes. Yes.

By the end of NABs 2016 financial year, as at the end of September - - -?---Yes. Yes.

20 - - - 2016, NAB subsidiaries had made a number of breach notifications to ASIC and APRA in relation to both planned service fees and adviser service fees?---Yes.

And there were further issues in relation to adviser service fees that were under investigation?---Yes.

25

And NAB was aware that ASIC was investigating the issue of fees for no service across the industry?---That's correct, yes.

And that it could decide to commence enforcement proceedings?---Yes.

30

And NAB had also received these prudential review reports from APRA that I just took you to, telling NAB that it needed to do more to reflect risk management considerations in its remuneration framework?---Yes.

35 And it was against that backdrop that NABs board came to make decisions about short-term incentive payments and executive remuneration for the 2016 financial year?---Yes.

40 Now, like the other banks that we've heard evidence from in this round of hearings so far, NAB has this short-term variable remuneration program for its employees?---Yes.

They're eligible to receive bonuses?---Yes.

45 And that also applies to the senior executives?---Yes.

And each year the remuneration committee makes a number of recommendations to the board about those bonuses?---Yes. Typically, for – well, no, not typically – I think always following a joint meeting of the risk and remuneration committees, yes.

5 Yes. Now, I want to focus on two of the sorts of recommendations that are made?---In 2016?

Yes?---Yes.

10 For now. The first is that the remuneration committee makes a recommendation about the size of the overall bonus pool?---Yes.

And can you explain in general terms what that involves?---Yes, I can. So it's actually quite a straightforward calculation. It's less straightforward today than it
15 was then, but in 2016 it was a relatively straightforward calculation. So the – in those days we referred to it as a pool. It's, I think, very confusing language. But, anyway, the calculation looks at the overall performance of the business in aggregate against various metrics and those other ones that you've drawn attention to, so cash
20 earnings, return on equity, and so on. So it compares the outcome with the board-approved target for each of those things at the start of the year. And then it's a simple arithmetic calculation. At least it was back then. It's no longer, but it was
25 back then a simple arithmetic calculation to say, well – which might say, well, we – the business as a whole met the financial targets and, therefore, the pool forms at 100 per cent, or it might form at 105 per cent, or 110 per cent, or it might form at 95 and so on. And it was a simple arithmetic calculation.

And, as part of that process, the remuneration committee made a recommendation about whether the size of the pool should be adjusted to take into account risk-related matters. That's right?---So we had – we had quite a discussion.
30

And I want to come to that, but am I right in terms of the process at the moment, that the remuneration committee decides whether to recommend that the size of the pool – even if all of those financial - - -?---Yes.

35 - - - metrics have been met - - -?---Yes.

- - - whether the size of the pool should be adjusted to take into account risk matters?---Or other matters, indeed, right? Or other matters. I mean, the board does, and did then, have absolute discretion to adjust the size of the pool for any reason.
40 But risk would have been, back then and – well, I think it's still true today. That would be the principal reason for the adjustment.

For adjusting the size of the pool?---Yes. Yes. Yes.

45 So that's the first recommendation. I said there were two that I was interested in - - -?---Yes. Yes. Yes. Yes.

- - - asking you questions about. The second is recommendations about risk-related adjustments to individual - - -?---Yes.

- - - short-term variable remuneration by NABs executives?---Yes.

5

And the remuneration committee makes recommendations about those matters with input from the risk committee?---Yes.

And the chief risk officer?---Yes.

10

Now, could I take you to NAB.005.868.2311, which is an agenda for a joint meeting of the remuneration and risk committees on 5 October 2016. So we can see from that agenda that there was to be a joint meeting on 5 October. And at the meeting of the remuneration committee ahead of the joint meeting – do you see that – there was scheduled to be a remuneration committee meeting first and then a joint remuneration and risk committee meeting?---That’s correct.

15

And, at the meeting of the remuneration committee, the CEO, at item 6, was scheduled to present a report to the committee about the performance outcomes for his direct reports?---Mmm.

20

Now, have you – do you recall that report, Dr Henry? Do you recall, let me put it this way, that that report from the CEO did not suggest any risk-related adjustments to the short-term variable remuneration of the executives?---Yes. Yes, I do recall.

25

And, further down, we can see from the agenda that at the joint meeting of the remuneration and risk committees the chief risk officer was scheduled to present a paper called FY16 Risk Management Performance. Now, can I take you to that paper, which is at 2406. We might need the full number for that document. NAB.005.868.2406. Thank you. So this is the paper from the chief risk officer relating to FY16 Risk Management Performance. And we see that it provided the remuneration and risk committees with the chief risk officer’s assessment of that risk management performance and outcomes for FY16?---Yes. Yes.

30

The chief risk officer did not suggest any risk-related adjustments to the short-term variable remuneration of NABs senior executives for this financial year?---That’s correct.

35

We see his recommendation at 2408 under the heading, towards the bottom of the page, Group Chief Risk Officer Recommendation:

40

Overall, whilst there have been a number of events and breaches identified during the year, they have been subject to appropriate and timely reporting, remediation and consequence management. On balance, given the current and forward-looking risk profile relative to overall risk appetite, Risk’s recommendation is that there is no discretionary risk-related adjustment to the group’s pool for FY16.

45

?---That's correct.

Do you have any observations to make about that recommendation, Dr Henry?---Well, as you know, we had trouble with it. The committee had trouble
5 with it, the board had trouble with it.

Well, I want to come to what the committee and the board did in response to this recommendation?---Well, that's my reaction, and it remains my reaction.

10 All right. Before we move to that, this recommendation didn't deal with individual risk-related outcomes. This was about the pool. That's right?---Yes.

So the next paper was on FY16 business outcomes for short-term incentives. That's at 2414. And this was a paper that was presented by the CFO with support from the
15 CEO. Do you recall that? If it assists, I will bring up 2416 next to this page so you can see - - -?---No. I recall it. Yes.

You recall that?---Yes.

20 And, under the heading back on 2414, which we have on the screen at the moment, FY16 Group STI Pool – do you see that? A bit under halfway down the page?---Yes, of course. Yes.

The CFO and the CEO recommended that 100 per cent of the short-term bonus pool
25 be funded?---Yes. As I said, it's a purely arithmetic, indeed, calculation.

Yes. Well, we see what it was based on underneath the table:

30 *The recommendation of 100 per cent is based on achieving cash earnings only slightly below plan, 99.4 per cent, despite net headwinds of 177 million.*

?---Yes.

Continuing:

35

The result is also 99 million above consensus and is likely to be viewed externally as modest outperformance.

40 So no reference to risk-related issues here?---That's correct.

All right. Now, I want to come to the minutes for the joint meeting that considered these documents?---Mmm.

45 But I think, because of the way the documents I've just taken you to have been presented, I need to tender them separately. The agenda is NAB.005.868.2311. I'm sorry. Could I tender that document, Commissioner.

THE COMMISSIONER: Yes. That document is exhibit 7.97.

EXHIBIT #7.97 AGENDA (NAB.005.868.2311)

5

MS ORR: And I should tender separately the FY16 Risk Management Performance report, NAB.005.868.2406.

10 THE COMMISSIONER: Exhibit 7.98.

**EXHIBIT #7.98 FY16 RISK MANAGEMENT PERFORMANCE REPORT
(NAB.005.868.2406)**

15

MS ORR: And the document which is on the screen at the moment, which is the FY16 Business Outcomes for Short-term Incentives Paper, NAB.005.868.2414.

20 THE COMMISSIONER: Exhibit 7.99.

**EXHIBIT #7.99 FY16 BUSINESS OUTCOMES FOR SHORT-TERM
INCENTIVES PAPER (NAB.005.868.2414)**

25

MS ORR: Now, could we turn to the minutes for the joint meeting, Dr Henry, on 5 October, NAB.092.001.1657. So we can see that you're listed as an attendee at this meeting?---Yes.

30

And we can also see that, before the meeting started you and the other directors, apart from Mr Thorburn, met in the absence of management and discussed the agenda items?---Yes.

35 And, after that, management joined the meeting?---Yes.

Now, what can you tell us about the discussion of the directors at the start of this meeting before management joined?---It's reflected in the minutes, I'm pretty sure. The committee was unhappy.

40

What was the committee unhappy with?---There had been no risk adjustments – risk-based adjustments proposed.

45 And that was the extent of the discussion?---I – that would have – that was the principal – that was the principal issue, that management had not proposed any risk-based adjustments, that there continued to be – as evidenced through the APRA reviews and other matters of which we were aware, there continued to be control

failings in the business that were concerning. We were aware that a lot of people were working very hard to improve controls. There had been full and open cooperation with APRA and its various reviews, which, of course, is reflected in the APRA letters. People were really trying to fix things but, nevertheless, the performance was not, in our view, where it needed to be. And so the question for us was what is the best way to – for the board to send a signal to the business that this is just not good enough.

And when you say the committee was unhappy with that, are you referring to the remuneration committee, the risk committee or both?---I would say both, yes.

Yes. All right. Now, could we look at the second page, 1658. We see there that the second item that was discussed at the meeting was the FY16 risk management performance paper that I took you to earlier. Do you see that towards the bottom of the page?---Yes.

And under that heading we see that one of the directors informed management that, based on the conversation before management joined the meeting, the committees were contemplating whether to recommend to the board that a discount be applied to the group short-term bonus pool in relation to risk management performance?---Yes.

And, over the page at 1659, we see at the top paragraph that:

The committees challenged Mr Gall on his recommendation to the committees that no discount be applied in light of the risk management issue set out in his memorandum

?---Yes.

And we see that, in response, Mr Gall and Mr Thorburn:

...described the progress that had been made during FY16 to reduce risk in the organisation and provided some further context.

?---Yes.

So Mr Gall and Mr Thorburn defended their recommendations and explained why the committees and the board could, in their words, “take comfort in improvements in risk management”?---Yes, I remember that. And the board was not satisfied, as you know.

Well, underneath that, we see that the committees noted Mr Gall’s recommendation. Do you see a couple of paragraphs down, noted Mr Gall’s recommendation and responses:

And confirmed that they would be factored into the committees’ further deliberations.

?---Yes.

Now, those further deliberations are recorded over the page at 1660 under the heading Recommendation to Board on FY16 Business Outcomes for Short-term
5 Incentives. And we can see there the meeting chairman invited directors to share their views. And those views are summarised below. And the first of the directors' perspectives was that there had been a significant amount of change in relation to risk-related matters throughout the year?---That's correct.

10 Is that Right?---That's Project Cornerstone to which I referred earlier.

And the second point was that reducing the short-term bonus pool would have an impact on staff morale?---That's true.

15 And that the capacity of most employees to influence risk management performance in the areas of concern to the directors was limited?---Yes.

I want to come back to that?---Yes. I'm sure you do. Yes.

20 The third point, Dr Henry, was that the tone from the top should be very clear regarding the board's expectations for a strong focus on risk the following year?---That's right.

And the fourth point was that incentives should be aligned with shareholder
25 outcomes?---Yes. Yes. And I'm not sure whether you're going to go to the two options that were considered by - - -

I am?---You are. Yes.

30 I am?---Okay. All right.

So I want to come back to each of these four points. But, first, we see further down that the committees asked Mr Thorburn to consider the two options that you've just referred to - - -?--- There we are, yes.

35 - - - and make a final formal recommendation?---Mmm.

And the two options were that the pool was to be set at 100 per cent with a strong tone from the top message to be conveyed by senior management regarding the
40 board's requirement that there be further improvements in risk management, and the second option was that the pool be set at 95 per cent, with the five per cent reduction attributed to sending a message about the board's concerns regarding further improvements needed in risk management. They were the two options - - -?---That's correct.

45 - - - that you asked Mr Thorburn to consider?---Yes.

And the committees agreed that they would recommend to the board that authority be delegated to you and to the chair of the remuneration committee, Mr Gilbert - - -?---Yes.

5 - - - to make a decision between those two options?---Yes. That's correct.

And that happened, the board accepted that recommendation and that authority was delegated to the two of you?---That's correct.

10 Now, I want to come to the decision that you and Mr Gilbert made, but can we first just go back to the four directors' perspectives on this page. Now, that first point there reflected the discussion that the committees had had with Mr Gall and Mr Thorburn. Is that correct?---Well, it did, but it also reflected the committee's knowledge of all the work that had occurred over the preceding 12 months,
15 obviously.

Well, the committees challenged Mr Gall and Mr Thorburn on the poor risk outcomes for this financial year. Is that right?---That's true, yes.

20 And, in response, Mr Thorburn and Mr Gall emphasised changes that had been made to the risk management framework in that year?---I see the distinction you're drawing. That is true. But, of course, the committee was aware that there had been more than framework changes.

25 Well, the changes to the framework hadn't been tested yet, had they?---No, they had not. No.

No one knew whether they would improve the outcomes?---Well, APRA thought they would, and we thought they would. And I think they have.
30

But what you did know – what the committees knew, Dr Henry, was that in the course of the year there had been a number of very poor outcomes, very significant breaches of NABs legal obligations?---That's right.

35 Do you think the committees were right to accept management's assurances that no consequences were necessary because changes were being made?---Yes.

Do you think you did enough to challenge those assurances?---Yes. I think we did. I do.
40

All right. Well, we will come to the decision. But, sticking with the second point here now, that related to the impact on staff motivation and the capacity of ordinary staff to influence risk outcomes. Does that reflect your views, Dr Henry, that ordinary staff have limited influence over risk outcomes?---No. Not in retrospect,
45 no.

It did at that time?---No. It's plausible, but I don't think the evidence – I don't think the evidence substantiates the point.

5 Do you accept that even relatively junior staff in your organisation should have enough knowledge to speak up about risk issues?---Yes, I do.

10 And, therefore, influence risk outcomes?---Yes, I do. And more to – more to the point, as you know, in some cases, quite junior staff have been dismissed for inappropriate risk behaviour.

The fourth point, Dr Henry, was that:

Incentives should be aligned with shareholder outcomes.

15 What did the committee mean by this?---This is 2016, right?

Yes?---I'm struggling to recall, honestly, but I suspect it was a reference to long-term shareholder outcomes.

20 Incentives should be aligned with long-term shareholder outcomes. What does that mean?---I think so. That is that long-term shareholder outcomes are likely to be affected by risk posture and risk performance.

25 And do you think this is an appropriate approach to remuneration?---Well, as you know, we've changed our – we've changed our whole model of remuneration in several important respects. It doesn't – well, it bears some relationship to the model that we were implementing in 2016, but in very important respects is very, very different.

30 Well, in the speech that you gave in May that I took you to yesterday, you said:

We would have to admit that even several years of strong performance for shareholders does not necessarily mean that customers are being treated fairly, depositors protected and banks made safe from the risk of failure.

35 ?---Yes. I think they're very wise words.

40 What about the words on the page, Dr Henry? What about "incentives should be aligned with shareholder outcomes"?---So I don't know whether now is the appropriate time to have this – this discussion, but in the first round of hearings, Commissioner, you put a question to a witness that is a very important question. You asked the witness to consider a continuum separating shareholders and customers. And your question was whether it was the case that businesses in financial services, including banks, were not locating themselves too close to the shareholder at the expense of the customer. In the ensuing period there has been a lot of discussion about that matter in Australia. And it's – it's a rather important discussion. It goes to the behaviour of businesses, obviously. It goes to what it is

that motivates businesses. It goes to the things for which boards hold themselves accountable in the conduct of the business. It actually goes to – there’s a much deeper level of importance to this question, because it goes to the state of capitalism. The capitalist model is that businesses have no responsibility other than to maximise profits for shareholders. A lot of people who have participated in this debate over the past 12 months have said that’s all that you should hold boards accountable for, is that they are focused on the maximisation of profits for shareholders. Now, of course, some people will say but that doesn’t mean that you can mistreat customers, because doing so might be in the interests of short – the short-term interests of shareholders, but not in the long-term interest of shareholders. But even that approach sees customers as instruments – in an instrumental fashion, that the customers are seen as the means by which shareholder profits are secured, rather than the customer being the focus, what the business is actually all about. In my testimony to you yesterday and in things that the chief executive said in this room yesterday, you would have gathered that this is something that within NAB we have, over the last few years, thought very deeply about, whether we should see our customers in purely instrumental terms, as a means to an end, rather than the end in itself. Views on this differ. It’s open, obviously, to the Commission to enter into this rather important debate. It could play a valuable role by doing so. But, anyway, for what it’s worth, NABs view clearly today is that incentives should be aligned with customer experience – customer outcomes, to be clear. Customer outcomes. That instead of positioning the business in this way, that the purpose of the business should be to maximise shareholder returns subject to customer tolerance and subject to regulatory tolerance, that, rather, the purpose of the business should be about maximising the outcomes for customers subject to financial viability. And it is a rather profound distinction.

There has been a shift from the sentiment that we see expressed in this document?---I would say monumental shift, yes.

Yes. Thank you. I tender the minutes of this meeting, Commissioner. It’s the meeting of – the joint meeting of the remuneration and risk committee on 5 October 2016.

THE COMMISSIONER: And the doc ID, Ms Orr.

MS ORR: NAB.092.001.1657.

THE COMMISSIONER: Becomes exhibit 7.100.

EXHIBIT #7.100 JOINT MEETING OF THE REMUNERATION AND RISK COMMITTEE DATED 05/10/2016 (NAB.092.001.1657)

45

MS ORR: Now, I said I wanted to come to the decision that you and Mr Gilbert made about whether to go with option A or option B, as presented in this paper?---Yes.

5 We see that you made that decision on 14 October 2016. Could I take you to NAB.005.868.2465. And we see from this document that you and Mr Gilbert had a meeting which was also attended by the CEO, the CRO, and the group company secretary?---Yes.

10 And you and Mr Gilbert required Mr Thorburn to make a recommendation about which of the two options should be adopted?---Yes.

And Mr Thorburn recommended option A, that there be no reduction to the short-term bonus pool?---Well, that's part of his recommendation, yes.

15

Well, he recommended option A, not option B, didn't he?---That's correct, but option A has two parts to it, obviously. Yes, that's all.

That – I'm sorry. You're referring to – that the:

20

...there be no reduction to the bonus pool, but an important tone from the top message be conveyed by senior management regarding the board's desire to see further improvements in risk management.

25 ?---That's right.

That's the second component of option A?---That's correct. Yes. Yes.

And you and Mr Gilbert accepted that recommendation?---We did.

30

For the reasons outlined by Mr Thorburn in the email that's attached to these minutes. That email is at 2466?---Yes, I remember it. Yes.

And it was for those reasons?---Yes.

35

So if we turn to that email, we see that Mr Thorburn set out a series of points in support of his recommendation that there be no reduction in the bonus pool?---Yes.

And the first of those emphasised, again, that the business had met its financial targets?---Well, clearly, that wasn't going to persuade us.

40

But that's the first point?---That was the very issue – that was the very matter that we took issue with.

45 But it was also the first point that Mr Thorburn made to you in this email?---I see your – yes, indeed. Yes.

And the second - - -?---And we were not happy.

Well, the second point that he made was there had been a major reduction to the pool in 2014. Now, was that because of the mis-selling of payment protection insurance
5 by your businesses in the UK?---Principally, yes. It could have been other matters in the UK. I just can't recall, but it certainly was UK-related, yes.

And Mr Thorburn said that the reason incentives were reduced in that year was not because of the poor management of risk, but because the remediation of those issues
10 meant that cash earnings hadn't been achieved. Do you see that?---Sorry. Could you take me back to that.

We will have that back up on the screen - - -?---Yes.

15 - - - for you again. He says that the reasons the incentives were reduced in 2014 was not because of poor management of risk - - -?---Does he say that?

Well, what he says is it was:

20 *...due to cash earnings not being achieved*

?---Yes, but the reason cash earnings were not being achieved was because of very poor risk management in UK - - -

25 But that is not?--- - - - Previously.

That is - - -?---So we were aware of this.

I know, but - - -?---And it was conduct charges that were applies to Clydesdale and
30 Yorkshire bank in that period as a consequence of poor risk management.

I'm talking about what Mr Thorburn is putting to you as the reasons that support his recommendation. He says to you there was a big reduction in 2014?---Yes. Yes.

35 "Because we didn't achieve our cash earnings"?---Yes, but what I'm saying to you is the reason why we didn't achieve the cash earnings is because of - - -

I understand that. I'm asking you to reflect on this communication from Mr Thorburn. Did this reflect the right approach by Mr Thorburn to these issues, to be
40 focusing on the impact on cash earnings in 2014, rather than the risk problems that sat behind that?---That's not - that's not why - I don't believe that's why Mr Thorburn authored this dot point. I think he was saying something quite different.

You think he was saying something different to:

45 *Due to cash earnings not being achieved.*

?---No, not that. I think what he was saying was if there is to be a reduction in the pool, it should be seen – it should be clear and seen as fair. What you’re referring to is the stuff in parentheses, which is the less important part of that dot point. The point here is that – and we were all aware of this – that the poor performance in the UK, (1) was due to very poor risk performance in the UK part of the business, and
5 (2) was entirely outside of the control of about 30,000 people working in NAB, because they had absolutely nothing to do with the UK.

10 And that’s the fairness - - -?---And that was the important point here.

That’s the fairness point - - -?---Correct.

- - - that you understood Mr Thorburn to be referring to here?---That is what I understand by this point, yes.

15 And, underneath that, Mr Thorburn referred to some more specific matters. He mentioned that NABs red rating for compliance risk – he mentioned that. And some of the matters that contributed to it. Do you see that?---Yes, I do. Yes.

20 And he said that three of those contributing matters were explainable. Do you see that reference in the - - -?---Sorry. I’m just - - -

- - - fourth dot point?---I was just a bit slow getting to it. I do see it. Yes.

25 But he didn’t mention the issues related to adviser service fees and planned service fees?---That’s true.

And he didn’t mention the bank bills swap rate matter?---I don’t think we need to go there.

30 Well, he didn’t mention it is my question, Dr Henry?---No, he didn’t mention it.

And he didn’t mention your foreign exchange breaches?---You mean the matters that were subject of the enforceable undertaking with ASIC?

35 Yes, I do?---That’s correct. Yes. Yes.

40 So he didn’t mention any of those matters, adviser service fees, planned service fees, the bank bills swap rate, the foreign exchange breaches. Did you have enough information from Mr Thorburn about those issues and the consequences that those issues might have to make your decision?---Yes.

Did it concern you that Mr Thorburn’s email to you did not mention any of those matters?---No.

45 Well, Dr Henry, given the very significant compliance breaches and other breaches in that financial year, do you think that you made the right decision in deciding that

there should be no risk-related reduction to the bonus pool?---Yes, bearing in mind that there was a requirement that the chief executive communicate to the organisation – right through the organisation that the board expected to see a substantial uplift in performance.

5

You said earlier, Dr Henry, that you weren't sure what the board could have done differently or when it could have done something differently. I want to suggest to you squarely that this was a point at which the board could have conducted itself differently. It could have sent a strong message by reducing the pool in response to these very significant compliance issues?---Of course, we could have, and we decided not to. For very good reasons. And I'm still happy with those reasons.

10

You said yesterday, Dr Henry, when I asked you about the right culture in a financial services entity that it was a culture that is all about the customer, which puts the customer front and centre and which is intolerant of practices which are not in the customer interest?---Yes.

15

What better way to demonstrate intolerance of practices which are not in the customer's interest than to reduce the bonus pool as a result of risk?---Well, we could have fired everybody, I suppose.

20

Well, that's not what I asked you. I'm asking you about a decision that was before you as the board - - -?---You asked me – you asked me what better way to demonstrate, that we have no tolerance for those sorts of compliance breach. You could fire people. And we do that, too.

25

Are you seeking to defend the decision that you made by reference to the fact that you could have, but didn't, fire people?---We did fire some people, yes.

30

Right?---But at more junior levels, as you know.

Yes. So you maintain that this was the correct decision, Dr Henry?---I do. Absolutely, I do. Yes.

35

I see. I tender this document, Commissioner.

THE COMMISSIONER: Meeting of board – minutes of meeting of board delegates 14 October '16 and attached email, exhibit 7.101.

40

EXHIBIT #7.101 MEETING OF BOARD DELEGATES AND ATTACHED EMAIL DATED 14/10/2016

45

MS ORR: Now, at NABs annual general meeting that year, Dr Henry, you committed to a review of NABs executive remuneration framework and practices?---Yes.

And I want to come back to the results of that review. But, again, I want to carry on with the sequence of events. We're in October 2016 at this point. Over the following year, progress at NAB in dealing with the adviser service fees issue was very slow. Do you agree?---Yes, I do.

5

NAB made proposals to ASIC about the approach it would take to investigating and remediating the adviser service fee issues?---That's correct.

10 And ASIC rejected those proposals, because it did not believe that they were sufficiently customer-centric?---Yes.

And, over the course of that year, your rating for compliance risk remained red?---Yes, that's correct.

15 And in part, that was because of the lack of progress on the adviser service fees issue?---Yes.

20 And then, in October 2017, ASIC provided NAB with a document titled Outline of Suspected Offending By the NAB Group. Do you recall that?---Sorry. Could I - - -

Yes?--- - - - see that, please.

Would you like to see that?---Yes.

25 ASIC.0036.0002.2531. Have you seen this document before?---Yes. Yes. I do remember this. Yes.

30 This is exhibit 5.68, Commissioner. Was this document drawn to your attention in October 2017 when it was received?---I honestly can't recall. I would expect so, but I honestly can't recall.

Should it have been drawn to your attention, Dr Henry?---Yes. I do think so. Yes.

35 It outlined alleged contraventions by NAB of the Corporations Act and the ASIC Act which ASIC described in the document as serious and systemic?---Yes.

40 Then, by the beginning of this year, 2018, NAB and ASIC still hadn't agreed on the approach that NAB would take to investigating and remediating the adviser service fees issues?---That's correct.

And, in April this year, NAB made another proposal to ASIC through correspondence sent by Ms Cook, NAB's chief legal counsel, about its approach?---Yes, I'm familiar with that. Yes.

45 And Mr Hodge asked Mr Thorburn a number of questions about that proposal?---Mmm.

The proposal emphasised that NAB had shifted to a fee for no service model before the introduction of the FOFA reforms?---Yes.

5 And relied on that as a basis for NAB to resist reviewing whether customers who paid ongoing fees before the introduction of those reforms actually received the services that they had paid for?---Yes, I'm familiar with that.

10 And it also claimed that it would be unjust for NAB to have to refund customers in circumstances where NAB couldn't track down records of whether those customers had received the services that they had paid for?---Yes.

You recall that?---I recall it.

15 Now, I want to take you to ASIC's response to that proposal. Have you seen that document before, Dr Henry?---I certainly have.

When did you first see that document?---I can't remember the exact time, but it wouldn't have been much after it was received.

20 All right. That is ASIC.0036.0002.3180. This is exhibit 5.77. So it's a letter from Tim Mullaly and Joanna Bird at ASIC to Sharon Cook and Nicole Smith. Do you see that?---Yes.

25 And we see that the authors said, under the heading Adviser Service Fees:

Your letter of 13 April 2018 fails to engage at all with the serious concerns outlined by ASIC in its position paper dated 27 October 2017.

30 That's a reference to the outline of suspected offending?---Yes.

And it goes on:

35 *The proposed resolution set out in your letter fails to adequately reflect any insight into the seriousness of the suspected misconduct, which took place over an extended period of time and affects a substantial number of customers.*

?---Yes.

40 And, in the next paragraph, it says:

45 *Moreover, it now appears the number of NAB group customers who may be affected by the fees for no service issue is likely substantially greater than outlined in ASIC's position paper, particularly when one considers the \$28 million of adviser fees for which the NAB Group purportedly has no corresponding digital evidence of the delivery of any service.*

?---Mmm.

You see that?---Yes, I can read it. Yes.

And ASIC went on to say,:

5 *In the circumstances, ASIC rejects the proposal outlined in your letter and will
continue with its investigation. In this regard, we understand that the
investigation team has separately conveyed its concerns with the NAB Group's
responsiveness to ASICs most recent compulsory notices. In the interests of
10 finalising the investigation as soon as possible, ASIC requires NAB to fully and
transparently cooperate with it and comply with the deadlines in the notices.*

?---Yes.

15 And then the letter dealt with the review proposal. ASIC did not agree with NABs
further review proposal. And, in the third dot point – we don't seem to have the dots
on the screen. But can you see towards the bottom of the page:

For a significant period of time - - -

20 ?---Yes.

Continuing:

25 *For a significant period of time, NAB has suggested various remediation
methodologies that ASIC has consistently rejected as unacceptable. And the
latest proposal retreats even further from what we would expect NAB to
consider to be in the interests of its customers. Accordingly, ASIC does not see
benefit in continuing to discuss the further review methodology with NAB.*

30 Now, you say you were made aware of this letter shortly after it was received?---I
believe so.

And what was your reaction when you read this letter, Dr Henry?---I was appalled.

35 What were you appalled by?---I was appalled that the issues had already taken so
long to achieve effective customer remediation, that is, a level of customer
remediation that both we and ASIC were – and when I say we, I'm talking about the
people negotiating with ASIC. That we and ASIC were both comfortable with. And
that it appeared that we had taken a U-turn.

40

By retreating. Is that what you mean by the U-turn?---Yes. That is what I mean.
Yes. Yes.

45 Can I take you to the minutes of the board meeting that followed the receipt of this
letter?---Yes.

On 31 May 2018. They are NAB.006.041.0138. You recall this meeting, Dr Henry?---Yes, I do.

5 And we see from these minutes – if we bring up 0140 and 0141, we see that Ms Cook provided an update at this board meeting about the adviser service fees issues?---Yes.

10 The board had reviewed a memorandum that provided that update. Ms Cook updated the board on discussions with ASIC, including ASICs letter that I just took you to?---Yes.

And the minutes record that:

15 *The board reiterated its frustration over the length of time taken to agree a methodology with respect to adviser service fees and to remediate customers. Previously expressed concerns were reiterated by the board over adherence to a position based on early adoption of the fee for service model, given the now known flaws in implementation. The board expressed further concern at the*
20 *tone and content of ASICs letter.*

?---Yes.

25 Now, Dr Henry, by this time NAB had been discussing this issue with ASIC for almost three years?---Three years. Yes. Yes. Yes.

30 And in that time NAB had repeatedly adopted positions that were not acceptable to ASIC. You disagree with that?---As you know – I’m not – no. I think that is true. But, as you know, one of the issues – and it has been presented in evidence in this Commission – is that there may have been different views within ASIC being communicated, different views in NAB. So – and I don’t have line of sight of that.

35 No. But do you accept that NAB had repeatedly adopted positions that were unacceptable to ASIC?---Yes, but not all the time and not on every occasion and not in every conversation.

40 Do you accept - -?---There were times when it’s clear – or at least we thought that we and ASIC were moving in the same direction. So I don’t think it’s – I don’t think it’s correct to say that at all times we were disagreeing with ASIC. That’s not correct. Neither is it correct, I think – anyway, I am led to believe it’s not correct to say that everybody in ASIC disagreed with NABs approach at all times. Nevertheless, three years, it’s absurd.

45 Well, ASIC had repeatedly warned NAB that the positions it was adopting were not in the interests of its customers. Do you agree with that?---I don’t know. I mean, ASIC says that’s the case. Obviously, I – I didn’t have any of these conversations with anybody in ASIC at any time.

No, but you received reports about those matters?---Addressing that particular point – well, I’ve seen the ASIC letter that we’ve – we’ve all seen which says that. I accept that it’s true, at least in direction, yes. And I do accept that that’s ASICs attitude to the way in which NAB approached this matter with ASIC.

5

Do you accept that NABs engagement with ASIC over that three-year period had the result of harming NABs relationship with the regulator?---Yes, I do.

10 And do you accept that it prevented NAB from getting on with the job of remediating its customers?---Yes, I do.

And it caused NAB to remain outside its risk appetite for compliance risk?---Because we didn’t have a customer – well, yes.

15 Dr Henry, why didn’t you say to management at this point, “Enough is enough. This is harming our customers. It’s harming our reputation with ASIC. Get it fixed and get it fixed now”?---So when did we say that? Because we did say that at some point. You’re saying it wasn’t May.

20 No. We see from this document that you reiterated frustration. I want to understand why you didn’t say at this point, having seen that communication - - -?---Yes.

- - - from ASIC, “Enough is enough. Fix it. Fix it now”?---Maybe we should have used those words. Maybe we did. It’s not reflected in the minutes.

25

No, it’s not reflected in the minutes?---Reiterated its frustration.

Yes?---We were pretty cross.

30 Did you say to management in this meeting, “This has got to stop. Get this fixed and get it fixed now”?---I don’t think anybody in management would have been in any – under any – or in any state of confusion about the board’s attitude to this.

About the board’s frustration?---Well, yes.

35

It was a simple thing to say, was it not, Dr Henry?---Well, we may have said it.

“This has got to stop”?---I can’t recall – I can’t recall the exact words that we used at the time. It was – it was pretty strong. It was pretty strong.

40

What do you recall about the words that you used, Dr Henry?---I don’t recall the words that I used.

45 Was it acceptable, in your view, Dr Henry, for NAB to behave in a way that provoked the kind of response from ASIC that we saw in that letter?---I’ve already answered that question and the answer is no. No.

It wasn't until September this year, nearly four months later, that NAB agreed a methodology with ASIC with relation just to the review of its employed financial advisers. Is that right?---Yes.

5 Even at that time, NAB was still some way from agreeing a methodology in relation to the review of its aligned licensees?---Yes.

Did NABs management do enough in response to ASICs letter to get this issue resolved?---I think so. Yes, I think so.

10

Why do you say that, Dr Henry?---Well, this marked a turning point, right, between May – or the end of May. So June and September in that three-month period we worked – management worked pretty quickly to the resolution of the major issue – the major issue outstanding between us and ASIC.

15

What do you describe as the major issue?---The one you just described.

Are you referring to the review of employed financial advisers or the - - -?---Yes.

20

- - - review of your aligned licensees?---No. No, the employed. Yes.

I see. Dr Henry, why did it take a letter from ASIC of that nature for you to reach the turning point - - -?---Yes. It's a good question.

25

- - - as you described it?---Good question. It goes back to one of your earlier questions this morning which I've already answered. I just don't think we should be in this world. We should not be behaving this way. It should not require letters of this sort of ASIC. It should be capable of us as a business behaving in the way the Commissioner put it.

30

So why - - -?---We should be capable of deciding for ourselves how we remediate our customers.

35

Why didn't the board step in earlier to ensure that that was done?---Yes. I've already answered that question. And I don't know the answer to that question. You know, at some point, obviously, we should have. Maybe 2015, maybe 2016, maybe 2017. Certainly by this year, 2018, certainly at this point – okay. Did – did I use the words enough is enough? Well, I don't know. I may have. I was certainly pretty upset. And as were the other directors on the board. Pretty upset. We wanted this fixed.

40

We were fed up, both with the damage that had been done to the relationship with the regulator and, of course, we had – well, and a new chair had come into ASIC who the chief executive had met with. He had reported to the board that the new chairman with a fresh pair of eyes on this matter was astounded. And that that certainly had some impact on us, as well. But, more importantly, we were upset that customer – customer remediation had been deferred for as long as it had been deferred. It was inconsistent – quite inconsistent with the discussions that we had been having with management about the purpose of the organisation, the vision of

45

the organisation, the values of the organisation, appropriate behaviours in the organisation. Of course we were upset.

5 Do you accept that the board should have stepped in earlier?---I wish we had, let me put it that way. I wish we had – I still don't know.

10 I would like you to answer my question, Dr Henry. Do you accept that the board should have stepped in earlier?---I have answered the question how I can answer the question.

I'm sorry. Is it a yes or a no, Dr Henry?---I've answered the question the way I choose to answer the question.

15 Well, I would like you to answer my question. Do you accept that the board should have stepped in earlier?---I wish we had.

I'm going to take that as a yes, Dr Henry?---Well, you take that as a yes. All right.

20 Now, I will tender that document, Commissioner.

THE COMMISSIONER: Minutes of NAB board meeting, 31 May '18, NAB.006.041.0138, exhibit 7.102.

25 **EXHIBIT #7.102 MINUTES OF NAB BOARD MEETING DATED 31/05/2018 (NAB.006.041.0138)**

30 MS ORR: Now, I want to ask you, Dr Henry, about the remuneration consequences for some of the executives who were involved in the handling of this matter?---Yes.

35 Could I ask you to look at NAB.006.094.0001, which is an agenda for a joint meeting of the remuneration and risk committees on 2 October 2018. So, as in previous years, there was a joint meeting to consider risk-related adjustments to individual bonuses and the size of the overall bonus pool?---Yes. Yes.

And if we turn to zero-zero – I'm sorry. I should – again, because the way these documents are presented, could I tender the agenda separately, Commissioner.

40 THE COMMISSIONER: The agenda of remuneration and risk committee meeting, 2 October '18, NAB.006.094.0001, exhibit 7.103.

45 **EXHIBIT #7.103 AGENDA OF REMUNERATION AND RISK COMMITTEE MEETING DATED 02/10/2018 (NAB.006.094.0001)**

MS ORR: And I want to take you to one of the papers presented, which dealt with risk management performance. That's 006.094.0015. Now, do you agree that this paper was much more detailed than similar papers presented in previous years?---Yes.

5

It included, among other things, an accountability review - - -?---Yes.

- - - for significant risk matters?---Yes.

10 And if we turn to 0020, we see the accountability review for the adviser service fees matter – I'm sorry. We might need to see the earlier page as well, 0019 and 0020. Do you see that?---Yes.

And, at the bottom of that first page, we see that the document records that:

15

While individuals have had differing contributions to the lack of progress of adviser service fees and planned service fees during FY18, given the duration, scale and severity of the customer and reputational impacts, it is appropriate to apply consequences across all parties who collectively had accountability for resolution of these issues.

20

?---Yes.

25 And, over the page, the accountability review included timelines of key events for significant risk matters – I'm sorry - - -?---Sorry. Is that the next page, is it?

- - - we might need to turn in further to see that, to 0029. We see the timeline of key events for the planned service fees, adviser service fees and foreign exchange enforceable undertaking matters on this page?---Mmm.

30

And, at 0033, we see a breakdown of recommendations for risk-related adjustments for each executive?---Yes.

35 And if we turn within that part of the document to 0037, we see the breakdown of recommendations for the risk-related adjustments for the current executive leadership team and some past executive leadership team members?---Yes.

40 Now, firstly, do you agree that this represented a significant improvement in the amount and quality of the information available to the board and its committees about risk-related matters?---Yes, I do.

And what prompted that change, Dr Henry?---I think there were a couple of things. Firstly, in your chronology you haven't taken us to the 2017 outcomes - - -

45 No, I haven't?--- - - - that was – that was quite a willing conversation, as well. And there were consequences applied in 2017, both to the overall group multiple, that is, the STI multiple, and also to individuals.

Well, the bonus pool was funded at 90 per cent?---That's correct.

In 2017?---That's correct.

5 Rather than 100 per cent?---That's correct.

And the board reduced Mr Hagger's individual variable remuneration by five percentage points?---On that occasion. That was not in respect of ASF, PSF, by the way.

10

No. That was - - -?---No.

- - - related to ongoing risk-related issues in the Wealth business, including the beneficiary nomination form issues?---Beneficiary nominations, that's right. So that was important background for us as we went through 2018, but, of course, the other thing that occurred was the introduction of the Banking Executive Accountability Regime, which I must say we have found really helpful in identifying accountabilities clearly. And I think what you see here is a reflection of both of those things.

20

I see. Now, we see that two members of the executive leadership team are identified on this page as being accountable for the adviser service fee and planned service fees issues. And they are Andrew Hagger and Sharon Cook?---Yes.

25 And we can see that the chief risk officer recommended consequence management for both of them?---Yes.

Mr Andrew Hagger received a risk rating of "not achieved"?---Yes.

30 And Ms Cook achieved a risk rating of "achieved"?---Yes.

Was that an appropriate risk rating for Ms Cook?---Yes.

35 Do you - - -?---In – yes. So I don't know whether this is in the papers or not, but – so in – we had introduced a new – or developed a new remuneration model for the executive leaders of the organisation. And our initial intention was to apply that new model for the first time to the 2018/2019 financial year. But we decided that we would instead apply the new remuneration model retrospectively to the executive leadership team for the 2017/2018 financial year. And, in the course of the application of the new framework, we came to the view that we needed, going forward, to find a – an intermediate step between met and not met with respect to risk that the – effectively, zero/one or black white assessment of met or not met with respect to risk wasn't sufficiently informative for the board. And so with – and I'm not saying this is the case with respect to Ms Cook, but there certainly were people that we looked at where frankly we would have preferred to have given a partially achieved with respect to risk. Going ahead – going forward, 2019, that's probably what we will do. We haven't settled on it yet.

45

So do you say you didn't give the partially achieved ratings in this year because that wasn't part of the system then?---That's correct.

5 Your system didn't allow for a partially achieved rating?---That – that's correct. But, nevertheless, of course, because the board has absolute discretion to vary amounts for any reason, even though we might, under the scheme, be required or feel obliged to give an achieved rating, we could, nevertheless, exercise discretion to provide an appropriate outcome in all of the circumstances. And that's what we did.

10 So you agree with the achieved risk rating that was given to Ms Cook?---Yes, I do.

Do you - - -?---And I've explained the reasons why.

15 Well, I just want to ask you a little further about that - - -?---Yes.

- - - Dr Henry?---Yes.

20 Do you think the way Ms Cook handled NABs interactions with ASIC, in particular prompting the letter from ASIC that I took you to earlier, represented appropriate management of risk-related matters?---Yes, I do, in the circumstances. Yes, I do.

What are the circumstances that rendered that appropriate, Dr Henry?---We've been through them.

25 No. I'm sorry. I don't think we have?---You don't? No.

No?---Okay. No. No. You wouldn't. All right. Okay. So Ms Cook was – she had a shared responsibility for these matters. She was not driving the – NABs position with respect to these matters.

30 But Ms Cook signed off on the letter that yielded the response from ASIC that I took you to earlier?---Yes.

35 Was that an appropriate management of risk-related matters by Ms Cook?---Yes.

To send a letter of that nature?---Yes.

40 What was appropriate about it, Dr Henry?---It represented NABs position which she communicated to ASIC.

It - - -?---Now - - -

45 - - - represented a deeply flawed position, didn't it?---Well, I agree with that. We've already been through that, as I said.

Yes?---It was a deeply flawed position. It was, nevertheless, NABs position which Ms Cook was communicating to ASIC.

So it's not her fault, because she was just communicating that position?---Yes.
That's probably – well, that is one way of describing it.

5 Well, is that how you see it, Dr Henry?---Well, she had some executive
accountability for this matter, as this table makes clear. And the board's judgment
on the appropriate consequences reflected not in the risk rating, for the reasons that
I've already explained, but, rather, in the discretion that the board exercised.

10 And the - - -?---And I think that was the appropriate way to do it.

I see. Another paper that was presented at the joint meeting was the paper on the
short-term bonus pool. I will take you to that, but could I tender this paper, first,
dealing with risk management performance for FY18, NAB.006.094.0015.

15 THE COMMISSIONER: That becomes, I think, exhibit 7.104.

**EXHIBIT #7.104 PAPER DEALING WITH RISK MANAGEMENT
PERFORMANCE FOR FY18 (NAB.006.094.0015)**

20

MS ORR: And if we turn to NAB.006.094.0041, we see the paper that was
presented to the committees on the short-term bonus pool. And we see from this
25 paper, in the middle of the page, that after adjusting for a potential conduct provision
of \$300 million, based on financial measures, the bonus pool would have been
funded at just under 85 per cent?---You can say after adjusting for the - - -

30 Well, I'm just?--- - - - conduct charge. You can say after adjusting for a large
number of things, of course.

I'm quoting from the document, Dr Henry?---Yes, of course.

35 I'm not trying to be difficult. The group STI outcome reduces to 84.7 per cent after
adjusting for a potential conduct provision of \$300 million?---Yes, but that's not – as
you know, that's not the principal reason why that number is so far away from 100
per cent.

40 What is the principal reason, Dr Henry?---The principal reason is performance with
respect to the net promotor score, which we discussed yesterday. That discusses 12
and a half percentage points.

45 Now, if we bring up the next page at the same time, 0042, we see that management
presented two options for the size of the bonus pool. The first was not to make any
risk-related adjustment and leave the bonus pool at 85 per cent. And the second was
to have different results for the executive leadership team and the rest of the bank,
with a small downward adjustment of five percentage points for the executive
leadership team and an upward adjustment of five percentage points for everyone

else?---Yes. That was – that was one option that was considered – put before the board.

5 Well, they were the two options presented by management for the size of the bonus pool, weren't they?---At that time.

10 Management said that there was nothing that precluded the remuneration committee from recommending that 100 per cent of the deferred awards should vest?---That's correct.

I will tender that document.

THE WITNESS: That's my memory of it. Yes. I think that's true, yes.

15 THE COMMISSIONER: Memorandum FY18 group bonus pool, NAB.006.094.0041, exhibit 7.105.

20 **EXHIBIT #7.105 MEMORANDUM FY18 GROUP BONUS POOL (NAB.006.094.0041)**

MS ORR: Can I take you to the minutes of the board meeting on 2 October this year, NAB.007.074.0001. The board met later on the same day as the joint meeting of the risk and remuneration committees?---Mmm.

And it considered the reports I've just taken you to?---Yes.

30 And if we turn to 0007 and 0008, we can see the board's consideration of the first of those reports in relation to risk management performance?---Mmm.

Just wait till we have the other page on the screen. And if we go about halfway down the page on the right-hand side of the screen, we see:

35 *The board discussed the targeted approach to risk management performance and consequence, observing that accountability is needed to be delivered or consequences would rightly apply. The board challenged the sufficiency of certain proposed consequences, and recommended management reassess the proposed reductions.*

40

?---Yes.

Continuing:

45 *The board recognised that the targeted approach to risk management performance (and consequences) may inhibit employees from proactively stepping into risk issues and taking accountability for them (particularly when*

5 *considering whether to accept a new role in an area the subject of significant remediation or when requested to inherit a risk or remediation issue from another division). The downside risks of stepping into risk matters were known, and would be amplified by the targeted approach to consequence management. The board encouraged management to celebrate risk management champions and those that stepped in to proactively deal with risk matters and to be transparent in telling the stories of those that achieved outcomes of highly achieved and outstanding on their risk rating.*

10 Now, I'm interested in the concern expressed by the board in that second paragraph that I just read to you. The concern that it might inhibit employees from proactively stepping into risk issues. One of the intended consequences of the BEAR is that there will be greater – a greater degree of individual accountability for banking executives. Do you agree?---A clearer. I would say clearer, but yes. Clearer.

15 You would not say “greater”?---No, I would not say greater. I would say clearer.

20 Both APRA's information paper released in April this year – are you familiar with that information paper about remuneration, Dr Henry?---You might have to get it up on the screen.

Well, let's leave the remuneration paper to one side for now. The final report of the CBA prudential inquiry had been released in May?---Yes.

25 And what I want to suggest to you is that that document – and I did want to suggest the remuneration document, as well – made it clear that APRA expected that remuneration consequences would reflect accountability for risk taking. Do you accept that that was APRA's express position?---Yes, I do.

30 And do you agree that one of the downsides of that approach is that it may inhibit employees from stepping into roles requiring individual accountability? Is that your position?---This is a consideration. This is – as you know, this is not what drove the board's decisions.

35 No, but I'm interested in these sentiments?---It's a consideration, right. It is a consideration.

40 And I want to understand if your position is that a downside of this sort of remuneration approach is that it inhibits employees from stepping into roles requiring individual accountability?---Right. So if the practice of the business is that when somebody steps into a role and discovers a mess – and this happens – and that mess is not remediated in a sufficiently timely fashion, and the board then exercises draconian consequence, then, of course, there is a risk that others would be disinclined to accept the challenge of going into a business that might have such
45 problems lurking. Of course. And that's obvious. And that's all this was really trying to say. And it was saying that, accordingly, the board, if it is going to exercise draconian consequence, as we did on this occasion, then the board should balance

that by celebrating risk management champions on the other side, so that we were sending appropriate messages throughout the – throughout the business to encourage the right sort of culture and people being prepared to shoulder the accountabilities. That's what it's saying.

5

Well, can I put a proposition to you and see if you agree with it, Dr Henry?---Yes.

If a person is not willing to accept accountability for risk-related matters, then they should not be an executive in a financial services institution?---That's obviously the case. Absolutely. That is obviously the case.

10

So either a person is willing to be accountable for the proper management of risk in their area of responsibility, including the risk of misconduct - - -?---Yes.

15

- - - or they shouldn't be in a position of responsibility in the bank. Do you agree with that?---Well, yes, I do agree with that. But the problem is that doesn't solve this problem. That doesn't solve – that doesn't go anywhere near solving this problem.

20

What problem, Dr Henry?---The problem that you may have a part of the business in which serious problems are lurking.

There's a mess there already, in your words?---Yes. And nobody wants to take over leadership of it.

25

I will tender this document, Commissioner.

THE COMMISSIONER: Minutes of NAB board, 2 October 2018, NAB.007.074.0001, exhibit 7.106.

30

**EXHIBIT #7.106 MINUTES OF NAB BOARD DATED 02/10/2018
(NAB.007.074.0001)**

35

MS ORR: And, before we leave this document, Dr Henry, we can see on the right-hand side of the screen at the moment at 0009, that the board also considered the report about the bonus pool?---Yes.

40

And the board wasn't happy with management's recommendations about the bonus pool?---That's correct.

And the board had made that known to Mr Thorburn during a private session?---Yes.

45

And we can see the minutes record that, as a result of that feedback from the board, Mr Thorburn presented revised recommendations?---Yes.

He recommended that the bonus pool would be 70 per cent for the executive leadership team and 85 per cent for all other employees?---Yes. Yes.

5 And the board approved that recommendation?---At that time. There was a subsequent adjustment, of course.

10 The board decided to release all deferred remuneration that was scheduled for vesting in November this year? If it assists you, Dr Henry, it's the second dot point at the bottom of the right-hand side of the screen?---Yes. Yes.

Yes. And then, over the page, at 0010, we see a note about the subsequent events that you referred to?---Yes. Yes.

15 And we see from that note that at a meeting on 30 October, the board decided to revise the bonus pool amount for employees other than the executive leadership team down to 80 per cent?---Yes.

20 And on 7 November it decided to forfeit the deferred variable reward for certain former executives?---That's correct.

So what changed between the start of October when this meeting was held and the dates on which those decisions were made?---Simply that it's at the end of that month, October, that we finalised the decisions. That's all.

25 So the board shifted its position from that expressed in the meeting?---Yes. That's not unusual, but yes.

30 And why did the board decide to adjust the overall bonus pool down further?---We wanted to make an adjustment for risk matters, a kind of risk overlay adjustment, if you like.

And what were the risk matters that you were adjusting for?---The ones we've been discussing all day.

35 The adviser service fees issues?---In part. In part. But beyond that to conduct issues.

Yes. I just want to - - -?---And - I should say - sorry - both compliance and conduct issues.

40 We don't have the benefit of a minutes of a meeting at which that decision was made, so I want to be clear what the matters were that factored into that decision?---Yes. Yes.

45 You say it was in part the adviser service fee and planned service fee issues?---Yes.

What were the other matters?---Well, general - the business' general performance on both compliance risk and conduct, by which we mean fair treatment of customers.

And who were the executives whose deferred variable reward was forfeited by the board?---I'm pretty sure you have that information, don't you?

5 It's not recorded in the minutes. Do you know who they were?---Well, honestly, I'm struggling a bit, but one – one was a person who had executive leadership of the introducer program, which - - -

Yes?--- - - - the Commission is familiar with.

10 The former CEO?---Another is the former CEO.

The former executive - - -?---So you do have it. Yes. Okay.

15 Well, I want to understand if this is correct, Dr Henry. The executive in charge of technology and operations?---That's correct, yes.

As a result of the AUSTRAC issues?---Yes.

20 And was it Mr Hagger in relation to the introducer program issues?---No.

Was Mr Hagger one of the executives?---Not – I don't believe – not in respect of the deferred adjustments – or the adjustments on deferred remuneration. And the reason for that is that the consequence applying to Mr Hagger was reflected in this year's outcome.

25 Why did the board decide to change its decision about the release of deferred remuneration to those individuals?---I don't understand the question. The board has to come to a decision on these matters before the remuneration report is finalised, and - - -

30 Yes?--- - - - we decided, on reflection.

35 Yes. I want to understand what led you to make that decision. What were the reasons? What – was the reason for the decision not to release any of the deferred remuneration the adviser service fees and planned service fees issues?---Sorry. Could you repeat that?

40 Did the adviser service fees and planned service fees issues lead the board to decide not to release deferred remuneration for any executive?---No. don't think so.

Why not?---Why?

45 Well, no, my question is why not? Why would you not, in response to those issues, impose a remuneration consequence - - -?---Upon whom?

Well, surely, there were executives in your business who had deferred remuneration that was scheduled to vest who had some responsibility for the adviser service fees and plan service fees issues?---Who? Who?

5 Well, you say there were none?---Correct.

None of your executives had deferred remuneration scheduled to vest?---None who were still with the bank had deferred remuneration scheduled to vest, yes.

10 What about your former executives?---I don't believe so.

You don't believe - - -?---Not who had responsibility for ASF and PSF, no.

So you didn't have any former or current executives?---Current, yes.

15

Yes?---Mr Hagger.

Yes?---And you've seen what happened – what the outcome was - - -

20 Well, I - - -?--- - - - for Mr Hagger.

I thought I understood your evidence to be that Mr Hagger did not have a decision made that had the result of his deferred remuneration not being released?---That's correct - - -

25

So my?--- - - - but he did have a consequence with respect to - - -

Yes. I'm focusing on a particular consequence, Dr Henry, which is the power the board has to decide that deferred remuneration will not vest?---Yes. Yes.

30

Did the board exercise that power in relation to any executive for the adviser service fee and planned service fees issues?---No. There was nobody – there was no former executive who had anything on foot.

35 And what about Mr - - -?---No former executive had responsibility for ASF, PSF - - -

What about Mr Hagger?--- - - - who had anything on foot. Well, I've already explained. We decided – of course, we could have - - -

40 Yes?--- - - - but we decided that we would effect it in the current year.

And why not also effect it in relation to his deferred remuneration?---Of course we could have. We could have taken less out of the current year and some out of the former year and left him in the same position. I don't see what difference it makes.

45

Well, why not out of both?---Well, why out of both? I don't – I just don't understand.

To show the way the board treats conduct that leads to issues such as the adviser service fees and planned service fees issues?---I think that's very clear from the outcomes. Very clear.

5 Now - - -?---I don't think anybody in NAB is in any doubt about it.

I want to look at the individual results that the board approved?---Yes.

10 If we turn to 0010 and 0011 in that same document. There was an overall reduction – we see this on 0011 – of 75 percentage points for Mr Hagger?---That's correct.

15 And how much of that was attributable to performance-related issues and how much to risk-related issues?---Overwhelmingly risk-related issues. In fact – wait on. We do know the answer to that.

Perhaps if we could have the headings brought up as well, so that you can see?---Yes. Yes. Okay. Well, you can see it there, that's right. So he lost 50 per cent of his at target variable reward because of risk issues.

20 Thank you. And there was a risk-related reduction of 20 percentage points for Mr Gall, the chief risk officer?---Yes, that's right.

25 And a risk-related reduction of 20 percentage points for Mr Lennon, the chief financial officer?---Yes, that's right.

And both of those were for reasons related to the adviser service fees matter?---Yes.

30 And there was a risk-related reduction of 10 percentage points for Ms Cook?---That's right. And a further 25 for Mr Hagger.

Was the 10 percentage point reduction for Ms Cook for reasons to do with the adviser service fees matter?---Yes, it was. Yes.

35 Do you think those adjustments were sufficient, Dr Henry?---Of course. Of course I do.

40 Do you think that if the board had made similar adjustments in earlier years and more clearly signalled through those adjustments that the delays in resolving these issues were unacceptable, the issues might have been resolved earlier?---Yes, they might have. Yes, indeed.

Well, should you have made similar adjustments in earlier years, Dr Henry?---We probably should have. We probably should have, yes.

45 Now, I mentioned earlier that at the 2016 annual general meeting, you announced that NAB was going to undertake a review of its executive remuneration framework?---Yes.

And the final topic I want to ask you about is the result of that process. You were involved in that review of the executive remuneration framework?---Closely, yes.

And you were involved in the design of the new framework?---Yes.

5

And it involves a number of changes from your previous framework. And I want to ask you about one of those changes. And that is the combination of short-term variable remuneration and long-term variable remuneration into a single variable reward?---Mmm.

10

I want to put a series of propositions to you to check that I've understood the position correctly?---Mmm.

15

Previously, your executives were entitled to two different types of variable remuneration, short-term and long-term?---Mmm.

And part of the short-term would be paid immediately in cash?---Mmm.

20

And part of it would be deferred for two years?---Well, no. The second part – part was deferred for one year and then half – the other half deferred for two years.

I see?---Yes.

25

So part deferred for one year and part deferred for two years?---Mmm.

And the deferred parts are paid in performance rights?---Shares.

Yes. That's what shares are. Is that - - -?---No.

30

They're not paid in performance rights?---No. No. No. Shares.

So the performance rights don't convert into shares when they're vested. Is that not how it works?---If they vest they do, yes. That's right.

35

Yes. So don't you get awarded performance rights that convert into shares when they vest?---You're talking about the performance scheme?

Yes, I am?---The – sorry, yes. Yes. I'm sorry. Yes. I misunderstood.

40

Have I got all that right?---Yes.

And they would usually vest at the end of two years – I'm still under the previous scheme - - -?---So half would vest at the end of one year and another half at the end of two years.

45

And the other half in two years?---Yes. Yes.

Unless the board decided to exercise its discretion to prevent them from vesting?---Yes. That's correct, yes.

5 And then the long-term variable remuneration was deferred for four years - - -?---Yes.

- - - previously. And all of that was paid in performance rights that converted into shares when they vested?---If they vested.

10 Yes?---Yes, subject to hurdles. Yes.

Whether they vested depended, as you say, on certain hurdles that needed to be met at the end of the four-year period?---That's correct, yes.

15 And NAB changed those hurdles from time to time?---Yes.

But for the 2017 financial year - - -?---Yes.

20 - - - the hurdles were relative cash return on equity growth, which determined whether 50 per cent would vest?---That's correct.

And relative total shareholder return, which determined whether the other 50 per cent would vest?---Yes.

25 So both financial measures?---Yes.

30 And in many recent years NAB didn't meet the relevant hurdles?---Well, the ROE hurdle had only been there for one or two years. I'm not sure. Was it one year or two years? Anyway, it scarcely matters. The relative TSR hurdle that had been in place for many years, and – well, actually, there was an absolute TSR hurdle at one point, as well, but anyway. And NAB's share price performance was such that it rarely vested. In fact, I can't – I can't recall that LTI component vesting until this last year.

35 So that meant that the executives didn't tend to receive long-term variable remuneration?---That's correct.

40 But, under the new system, there's no distinction between short-term and long-term variable remuneration?---That's correct.

All executives get a single variable remuneration amount?---Yes.

And part of that is paid in cash immediately?---Yes.

45 And part of it is deferred for four years - - -?---That's correct.

- - - and then paid in shares?---Yes.

There are now no performance hurdles that determine whether the deferred part of the variable remuneration will vest. Is that right?---Not really. Or I could say yes and no. It's - - -

5 Are there performance hurdles?---So, as you know, the – on the deferred share – with respect to the deferred shares, they remain at risk for the full four-year period.

10 Yes?---And can be – can be forfeited by the board at the board's absolute discretion for any reason, including risk performance, including matters that the board becomes aware of after the initial grant which were not known to the board at the time, and also for a failure to meet the targets in the accelerate One NAB plan which include a mix of financial – financial and non-financial metrics. And so one of the factors that the board would – would continue to assess over that four-year period is TSR
15 performance. So although it's true that there is no numeric hurdle that has to be jumped at the end of the period, it is not the case that there is no application of those considerations by the board to the amounts that would ultimately fall to the benefit of executive leaders.

20 You say those matters still factor into the board's discretion as to whether or not to forfeit the unvested amount?---Correct.

And is that formalised in any way, how the board deals with that?---Well, formalised, we have it written down somewhere. Yes. Yes. Yes.

25 But you don't – you don't have any - - -?---But we don't have – we are very keen to avoid a bit of – a bit of arithmetic here, such as applied under the former scheme for – well – well, for reasons that are clearly set out in our remuneration report. We – so – and, in any event, under BEAR, as you know, the board has to have – has to retain the ability to forfeit deferred amounts. That's the 60 per cent – well, we have 60 per
30 cent. BEAR actually requires only 40 per cent for those below the chief executive. But the board has to retain the absolute discretion to forfeit those amounts for any reason. And so we can't tie ourselves to particular formula and we won't.

35 And is it the case that, even after it's vested, the board has the power to require an executive to pay some or all of it back if issues are discovered later. Is that right?---In certain circumstances we could claw back. That's our view.

40 What sorts of circumstances, Dr Henry?---Probably the sorts of circumstances we've been talking about today.

You mean the adviser service fees issues?---Not that particularly. I mean customer conduct issues, of which adviser service fee issues is an important instance.

45 Well, do you – do you think there are circumstances in the past where the board might have clawed back variable remuneration had it had the power to do so at the time?---Quite probably.

And what were those circumstances?---With respect to former executives who had responsibility for the Wealth Management business.

And are you referring there to the adviser service fees issues or other issues?---Both.

5

Now, why did NAB choose to move from a short-term and long-term variable reward scheme to a single form of variable remuneration?---So there is a – there’s a significant problem with LTI schemes. Well, in fact, there are a couple of significant problems with LTI schemes, particularly those that are based on relative TSR
10 hurdles. The first is that executives may place no value on them at all. Now, you may say so what? But what is the point of having a – a substantial component of remuneration which executives don’t value? There’s no point having it. But the second is that those TSR hurdles are being assessed every year. There’s always an LTI from a – a period four years earlier that is coming up for testing at the end of
15 every financial year. And, getting close to the end of the financial year, of course, executives will be aware, some more than others – it depends who they are. But executives will be aware of where the share price is relative to the level at which the TSR hurdle would be met and the LTI would vest. And there is the real risk of inappropriate decision-making around those – around those periods of testing. And
20 there is the risk that executives will be constrained in putting recommendations to the board that are in the long-term interests of the business but which might be expected to have an adverse impact on the share price in the short term. And these problems are well understood in the literature, in the construction of LTI schemes based on relative TSR. And we took the view that it was better, and in the spirit of BEAR,
25 that the board take accountability for the performance outcomes, rather than leaving performance outcomes to the interplay between the vagary of the markets and decisions that might be announced to the market in or – on or around those testing times.

30 How do you think your shareholders are likely to respond to that, Dr Henry?---Yes. This is a question that I’ve had in my mind for two years now. And, of course, I have met with our major shareholder groups on a number of occasions over the past two years, both in the development of the scheme and since the finalisation of the remuneration report in the application of the scheme, and there are different views.
35 And we go into the AGM on 19 December this year with differences of opinion amongst shareholders, fund managers, proxy advisers, and so on. I – there’s a mix of views. So some of our shareholders, including very major shareholders, are fully supportive of this scheme, in fact, had been encouraging us to move to a scheme such as this. And others are not. Others would prefer that – that NAB executives be
40 rewarded more in the way that they’re rewarded, which is for outstanding share price performance. I understand that, but I’ve explained to you the reasons why we don’t think that that is the appropriate way for our senior executives to be rewarded.

45 Could I ask that you look at APRA.0080.0001.0001, which is a note of a meeting between you - - -?---This is a note for file?

Yes?---I was really interested to see this.

Well, that's good. Let's talk about it, Dr Henry. It's a meeting between you and Loveridge and Lynda Dean, all from NAB, and Wayne Byres and two others from APRA. So it's a note prepared by APRA about that meeting?---Yes.

5 And I want to take you to the last heading in the note, Insight into Challenges Faced by RemCos. Now, the first bullet points appear to relate to things that you said during that meeting:

LTI –

10

Long-term incentive –

is seen as a lottery ticket (which seems a reasonable view, given the vesting history at NAB).

15

Is that your position?---I doubt that I'm – I doubt that I voiced the stuff that's in the parentheses. I suspect that that's - - -

I see. So the first part is something you said?---Yes.

20

And the part in parentheses is someone's extrapolation?---I suspect so. A comment on – a comment on what I said, yes.

And the second dot point:

25

Hence, execs do not view them as incentivising, given hurdles are high. In addition, carrying the loss-making UK banks on their books for many years meant there was no chance of long-term incentive vesting.

30

Are those your views, as well?---Yes.

And the third point:

35

Asymmetry in valuation of rem – execs assign little value to LTIs, whereas government and public just consider them to be part of salary.

Is that your position?---Yes.

And then something further is attributed to you:

40

It is very difficult to come up with a structure to appease all stakeholders. For example, this week you met with two investor institutions and discussed the potential move to a single remuneration element. One investor was very supportive, the other was against it.

45

Does that reflect things that you said in this meeting?---And which I have said also here today, yes.

So is part of the reason why NAB has decided to get rid of long-term bonuses because they don't do enough to incentivise executives?---That's one of the reasons.

5 And what behaviours do you say a deferred component of variable remuneration should incentivise?---We've been through this at some length. Behaviours that are in the interests of customers.

10 And do you think that your new remuneration model achieves that?---I do. Absolutely I do.

And you might have heard that I asked Ms Livingstone last week for her views about NABs change to a single form of variable remuneration?---Yes.

15 And she said that it had the risk of rewarding short-term performance and distracting from focus on the longer term. What do you say to that?---Well, obviously, I disagree. I think I might have to have lunch with her and explain how it works.

20 Part of the reason for the strike on CBAs remuneration report in 2016 was adjustments that CBA proposed to make to its performance hurdles for long-term variable remuneration?---Yes.

25 CBA had reduced the amount of long-term variable remuneration that depended on TSR, total shareholder return. That was the evidence of Ms Livingstone?---Yes. I think there was more to it than that, but my memory is a bit hazy.

That was one component of it?---Yes. Okay.

30 But you've gone a step further than that. You've got rid of the hurdles entirely?---Yes.

So that subject to the board's decision as to whether or not to forfeit the unvested amounts - - -?---Yes.

35 - - - the entirety of the variable remuneration will vest?---I put that the other way around, actually, but still. Yes, it will vest, subject to the board's decision. The whole lot is at risk.

40 But without hurdles that are transparent - - -?---With hurdles that are applied by the board.

But not transparent to the shareholders?---No. That's not – well – well, the shareholders are aware of the factors that the board will take into account.

45 But there were no hurdles that are transparent to them that need to be met for that remuneration to vest. Do you agree?---There's no share price hurdle, either absolute or relative. That's true. Although the accelerate One NAB plan does have in it that LTI performance should improve relative to so that's one thing. I think

shareholders are capable of understanding what that means without being prescriptive about a particular hurdle. And we're not going to be prescriptive about a particular hurdle, for the reasons that I've mentioned.

5 So I asked you earlier what you thought shareholders would make of this. Can I ask you whether you think that the two strikes rule requires boards to focus too much on financial measures in the design of their remuneration systems at the expense of measures that are directed to things like reducing the risk of misconduct or ensuring good outcomes for customers?---My personal view is yes.

10 You think that it does require too much of that financial focus over those other measures?---I do think that's the case, yes.

15 So do you think that any changes should be made to the two strikes rule?---Yes. And I – and let me put it this way. The two strikes rule would never have been legislated in today's circumstances.

20 What changes do you think should be made, Dr Henry?---I really don't know. I've thought a lot about this. I really don't know. I think that, as I said yesterday, boards have to accept that they have an accountability for matters which go beyond the financial performance of their business within a particular year, and the share price performance in a particular year. I think that – I think that that's the case. I do think that's the case. How that is operationalised in a way that has the relevant stakeholders holding the board accountable for its performance, I don't know. And
25 that really is, in my view, your challenge, and I think it's really hard. I think it's really hard.

All right, Dr Henry. I have no further questions.

30 THE COMMISSIONER: Yes, Ms Harris.

<RE-EXAMINATION BY MS HARRIS

[12.48 pm]

35 MS HARRIS: Just one matter, Commissioner. Can we bring up exhibit 7.88, NAB.007.049.0092_E.

40 Dr Henry, do you recognise that document as one with respect to which Counsel Assisting asked you a number of questions - - -?---Yes, I do. Yes.

- - - yesterday?---Yes.

45 And you see in the middle of the page, about the fourth paragraph, there is a reference to early activities to drive mobilisation?---Yes.

And Counsel Assisting asked you what the plan was for activities to drive the mobilisation of the culture that you're looking for?---Yes.

5 That's at transcript 7111. Do you remember that?---Yes, I do remember that. Yes.

Now, Counsel Assisting took you to a number of the – one of the appendices, I should say, to this document. I would like to show you several of the other appendices to that document. The first is at 0096. And perhaps that can be brought up alongside 0097. So that's 0097. Can I show you 0096, as well. Can you read those, Dr Henry?---Yes, I can. Yes. Thank you.

And do those pages help to explain the way those activities to drive the mobilisation of culture will occur?---Yes, they do. Yes.

15 And can you outline briefly for the Commissioner how those documents do so assist?---Well, in the page on the left-hand side we can see the activities that are being prioritised for – for next year.

20 When you say next year, Dr Henry, do you mean - - -?---It's actually the current year, of course.

Yes. Thank you?---I'm sorry, for fiscal year '19, which is the year that commenced on 1 October. And then the next page takes us through the timeline for the first two quarters of fiscal year '19 and then the second half of fiscal year '19. And some of those are in the mobilised space and some are in the embedded space. Yes.

And, can I ask, Dr Henry, was the board satisfied with that as a plan for – as a program for the mobilisation of those activities and the embedding of that culture?---Yes, absolutely. Yes.

30 Thank you. No further questions, Commissioner.

THE WITNESS: Thank you.

35 THE COMMISSIONER: Yes. Thank you, Ms Harris. Ms Orr, the note for file.

MS ORR: I didn't tender the last document. I apologise, Commissioner. The APRA document, the note for file, which was APRA.0800.0001.0001.

40 THE COMMISSIONER: Becomes exhibit 7.107.

EXHIBIT #7.107 APRA NOTE FOR FILE (APRA.0800.0001.0001)

45 MS ORR: And, Commissioner, I need to tender two statements from a NAB witness that dealt - - -

THE COMMISSIONER: Do we need Dr Henry?

MS ORR: We can. I have no further questions for Dr Henry.

5 THE COMMISSIONER: Dr Henry, thank you very much. You may step down?---Thank you.

10 <THE WITNESS WITHDREW [12.51 pm]

MS ORR: NAB provided two statements from Lynda Dean, L-y-n-d-a, Dean, the first dated 2 November 2018.

15 THE COMMISSIONER: That statement will become exhibit 7.108.

EXHIBIT #7.108 FIRST STATEMENT OF LYNDA DEAN DATED 02/11/2018

20

MS ORR: And the second dated 16 November 2018.

THE COMMISSIONER: That statement will become exhibit 7.109.

25

EXHIBIT #7.109 SECOND STATEMENT OF LYNDA DEAN DATED 16/11/2018

30 MS ORR: Thank you, Commissioner. If that's an appropriate time - - -

THE COMMISSIONER: Yes.

MS ORR: - - - we could resume again after lunch.

35

THE COMMISSIONER: 2 pm.

MS ORR: Thank you, Commissioner.

40

ADJOURNED [12.52 pm]

45 **RESUMED [2.00 pm]**

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Commissioner, the next witness is Mr Wilkins. Just before Mr Wilkins is sworn in, can I just indicate we've also received a witness statement from Ms Fiona Wardlaw, the group executive for people and culture at AMP Limited. And I tender that statement, which is dated 2 November 2018, and it has document ID AMP.6000.0345.0011, together with its exhibits.

THE COMMISSIONER: That statement and its exhibits becomes exhibit 7.110.

EXHIBIT #7.110 WITNESS STATEMENT OF FIONA WARDLAW AND ITS EXHIBITS DATED 02/11/2018 (AMP.6000.0345.0011)

<MICHAEL JOHN WILKINS, SWORN [2.01 pm]

<EXAMINATION-IN-CHIEF BY MR HOLLO

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

MR HOLLO: Your full name is Michael John Wilkins?---Yes.

And your address is 33 Alfred Street, Sydney. Is that correct?---Yes.

And you are the acting chief executive officer of AMP Limited?---Yes.

And you are also a director of the company?---Yes.

You're attending the Commission today in response to a summons. Is that correct?---Yes.

And do you have the summons with you?---I do.

Commissioner, I tender the summons.

THE COMMISSIONER: Exhibit 7.111, the summons to Mr Wilkins.

EXHIBIT #7.111 SUMMONS TO MR WILKINS

MR HOLLO: Mr Wilkins, you have provided a statement in response to a request from the Commission. Is that correct?---Yes.

And the statement is dated 21 November 2018, and you've exhibited some documents to the statement?---That's correct.

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

5

Commissioner, the ID for the statement is AMP.6000.0384.0001. And I tender the statement and its exhibits.

10 THE COMMISSIONER: The statement and exhibits of Mr Wilkins becomes exhibit 7.112.

EXHIBIT #7.112 STATEMENT AND EXHIBITS OF MR WILKINS DATED 21/11/2018 (AMP.6000.0384.0001)

15

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

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

MR HODGE: Thank you, Commissioner. Mr Wilkins, you've been the acting CEO of AMP since 20 April 2018?---That's correct.

25

And your time as acting CEO ends on 1 December of this year?---That is correct.

You've been a director of AMP Limited since September 2016?---Yes.

30 And you are also a non-executive director of AMP Life Limited and National Mutual Life Association of Australasia Limited?---Yes.

Before you were appointed as the acting CEO, you were a member of the AMP audit and risk committee?---The audit committee and the risk committee.

35

I'm sorry. You were a member of each of those committees since September 2016?---I don't recall those dates, but about that time.

40 And you were the chairman of the risk committee between May 2017 and your appointment as acting CEO?---Yes.

And you were the interim executive chairman of AMP between 30 April 2018 and 21 June 2018 when Mr Murray was appointed as the chairman?---That's right.

45 Now, before you joined AMP you were, between 2008 and 2015, the managing director and CEO of Insurance Australia Group Limited?---Yes.

And you've also held various memberships of a wide variety of industry and advisory groups?---Yes.

5 And that includes the Australian Government's Financial Sector Advisory Council and the Business Council of Australia?---Yes.

10 What I want to turn to now is to deal particularly with remediation at AMP. And you were asked by the Commission, as Mr Hollo has already indicated, to provide a statement that addresses a number of topics?---Yes.

And one of those topics was concerned with the remediation that AMP is undertaking in relation to its advice business?---Yes.

15 And that remediation is concerned with two issues. One is inappropriate advice?---Yes.

And the other is what is commonly referred to as fees for no service?---That's correct.

20 Now, AMP is, as we understand it, presently in the process of remediating customers or attempting to remediate customers for inappropriate advice and fees for no service?---We're in the process of – of doing that, yes.

25 And the need for customer remediation was originally prompted by ASICs Wealth Management Project?---Yes, that's correct.

And that project, I think, began or was established in about October 2014?---Some – sometime around then.

30 And then, at some point after that, that was when AMP began looking at how it might go about remediating customers who had suffered from inappropriate advice or fees for no service?---I think the program began in 2016.

35 And that was the review and remediation program. Is that right?---Yes.

And that particular program, I think, was commenced in about July of 2016?---That's my understanding.

40 And as we understand it, there were or are three parts to the program. One is remediation for inappropriate advice?---Yes.

The second is ongoing service fee remediation. That's the fees for no service remediation?---Yes.

45 And the third is fee remediation to investigate where clients may have been charged fees in error?---Yes.

And the ongoing service fee component is different to the BOLR and ring-fencing conduct that was the subject of round 2 hearings of this Commission?---That's correct.

5 And AMP is separately remediating – or has remediated for that conduct?---My understanding is we've remediated those customers.

Now, that review and remediation program, which commenced in about July of 2016, it had been prompted by a request from ASIC in March 2016?---That's my
10 understanding.

And ASIC had outlined two requirements to AMP in relation to the program?---Again, my understanding.

15 And, just to run through – confirm this is your understanding, the first was ASIC required AMP to identify all serious compliance concerns back to 1 January 2009?---Correct.

And the second was ASIC also required AMP to confirm that all service obligations
20 had been delivered in line with the documented agreements back to 1 July 2008?---Yes.

And AMP went about trying to address those two requirements of ASIC by including what I think is referred to as a lookback review in the review and remediation
25 program?---Yes.

And the lookback program is, essentially, an historical review of adviser conduct and advice to see whether inappropriate advice or fees for no service conduct has
30 occurred?---Yes.

And AMP originally agreed with ASIC to undertake this review and remediation program for inappropriate advice for the period 1 January 2009 to 30 June
35 2015?---Yes.

And recently AMP has extended – or agreed with ASIC to extend the period up to 30 June 2017?---Yes.

And AMP originally agreed with ASIC to undertake the – I'm sorry – review and remediation for fees for no service for the period 1 July 2008 to 30 June
40 2015?---Yes.

And, again, recently, AMP has agreed to extend this period to include the period from 1 July 2015 through to 31 December 2017?---Yes.

45 And I think you explain in your statement that the reason that you've agreed to do this is because – or for two reasons. The first is to ensure customers are treated fairly?---Yes.

And the second is because this is what you anticipate ASIC is going to require?---Yes.

5 Now, ASICs report 499, which is the report dealing with fees for no service was released in October 2016?---Yes.

And in that report AMP was then listed, as at 31 August 2016, as estimating that it would pay \$4.6 million in compensation for fees for no service?---Yes.

10 And in March 2017, ASICs report 515 was released which relates to, effectively, how large institutions oversee their advisers?---Yes.

15 And in that report, AMP is listed as having paid total compensation, as at 31 December 2016, of approximately \$7.3 million to 429 customers in respect of 19 advisers?---Yes.

More recently, on 27 July 2018 - - -

20 THE COMMISSIONER: Just go back a moment, Mr Hodge. You said, I think, 7.3 million to 429 customers?

MR HODGE: Yes.

25 THE COMMISSIONER: Yes.

MR HODGE: In respect of 19 advisers.

THE COMMISSIONER: Yes.

30 MR HODGE: And then more recently, Mr Wilkins, on 27 July 2018 AMP announced that it expected to provision \$290 million in post-tax dollars for remediation in relation to reports 499 and 515?---Yes.

35 And that total amount, then, of 290 million includes remediation for both inappropriate advice and fees for no service?---Yes.

But that's in post-tax dollars?---Yes, it is.

40 And subject to certain – or arrived at in accordance with a particular accounting standard. Is that right?---It accords with accounting standards, but it's also derived from estimates that have been made from sampling of various files.

45 The schedule to your statement to the Commission sets out the number of customers remediated and to be remediated and amounts paid and to be paid, as AMP now estimates it, for fees for no service and inappropriate advice?---Yes.

And that schedule is, as we understand it, current as at 31 October 2018?---Yes.

And we can bring up the schedule. It's AMP.6000.0384.0001, which is Mr Wilkins' witness statement at .0022. And the highlighting makes it a little difficult to read on the screen, but if we just focus on the column that is second from the left, which is headed Total Program. And this is the column setting out the current estimate of
5 remediation for both inappropriate advice and fees for no service?---Yes.

And we see the number of customers reviewed to date is 3495?---Yes.

10 The number of customers remediated is 2363?---Number of customers offered remediation.

Sorry. Offered remediation. Quite right. Is 2363?---Yes.

15 The amount offered is \$20 million?---Yes.

The number of customers remediated is 2018?---Yes.

The amount paid to date is \$15.6 million?---Yes.

20 The number of customers to be reviewed is 217,845?---Yes.

The number of customers estimated to be remediated is 107,735?---Yes.

25 And the total amount estimated to be remediated is \$440.4 million?---Yes.

And that amount comprises \$80.7 million for inappropriate advice?---Yes.

And \$359.7 million for fees for no service?---Yes.

30 And, just on that last amount, on fees for no service, does that include the cost to AMP of carrying out the review and the actual program costs, as distinct from the amounts for remediation?---No, it's only the – the amounts for the remediation, which is inclusive of lost earnings on those fees.

35 Yes. But not the cost to AMP of actually - - -?---Not the cost to AMP.

- - - reviewing the files?---No.

40 Now, it's, obviously, the case that the amounts that are now listed in the schedule to your statement are significantly higher than the amounts that had been estimated and observed as at 2016?---Yes.

45 And you say in your statement that AMP did not fully appreciate the size or complexity of the issue in 2016?---Yes.

And why do you think that was, Mr Wilkins?---I think that we did not have a full appreciation of the – the impact of – of this on the small number of sample files that

we looked at. We believed that that was most of the issues that we were facing. And I think that AMP believed, as did the industry, that this was not such a large issue.

5 I see. What we might do is just look through some of the background to AMP's attempts to date to try to put in place the review and remediation program. As we understand it, in August of 2017 AMP had proposed a particular strategy for reviewing and remediating clients that were charged for services that were not provided?---Yes.

10 And at that time AMP had identified that there was approximately \$838 million in ongoing fees related to AMP products in the period 1 July 2018 to 30 June 2015?---2018 – twenty - - -

15 I'm sorry, 1 July 2008 to 30 June 2015?---Yes.

And that was in respect of 3911 advisers?---Yes.

20 And the number of ongoing service fees, if you – I'm sorry. The value of ongoing service fees, if you included the period January to June 2008 and July to December 2015 was closer to a billion dollars?---Of that order.

25 And then, some time in 2017, it became apparent that the strategy that AMP had proposed for its review and remediation program would not meet customer and regulator expectations for timely remediation?---Yes.

And that was for both the fees for no service and inappropriate advice components?---Yes.

30 And so, in November of 2017, Deloitte was engaged to undertake a review of the program?---Yes.

And the purpose of that review was to try to establish a turnaround strategy to accelerate the program?---Yes. We wanted to accelerate the program at that time.

35 Now, what had happened – or what did happen was that by February of 2018 the review and remediation committee had endorsed what is referred to as a baseline approach to remediation?---Yes.

40 And for fees for no service, the baseline approach was to establish a full listing of customers charged ongoing service fees and used key risk indicators to segment the advisers into cohorts depending on whether they were high risk or not and review the book of clients for the high risk advisers?---Yes.

45 And for inappropriate advice, there was a similar process that was going to be used to use KRIs in order to identify high risk advisers and then sample their advice?---Yes.

And it was initially thought that, under this baseline approach, remediation would take approximately five years?---Yes.

5 It was a five-year plan for remediation. And, ultimately, you recognised – or AMP recognised that there had been inappropriate assumptions made in order to think that it could be done in five years?---Yes.

10 And that, in fact, it would take nine years to carry out the baseline approach?---It was certainly going to take considerably longer than – than five years to be able to follow that approach.

15 Well, I think if we bring up tab 2 to your statement, which is AMP.6000.0372.0097, and go to page .0100. We see at the top of the page what has been explained is that, once you adjust the assumptions, that the new updated baseline plan would take nine years to complete with a cost of \$1.185 billion?---Yes.

And, as a consequence, a decision was made in April of 2018 that there needed to be an additional focus to try to expedite this remediation?---Yes.

20 And was that additional focus prompted, in part, by the reputational effects on AMP of the evidence that was heard during round 2 of the Royal Commission?---Possibly in part, although for a period towards the end of 2017 and into 2018, the AMP board was becoming increasingly concerned that the remediation process was proceeding too slowly.

25 And did the board have a view as to why the process was proceeding too slowly?---The process that was being followed was one where files were being collected on a – an individual adviser basis and examined on that basis. The adviser network is very geographically diverse. And when we looked at it, particularly in
30 April of – of 2018, we just felt that there needed to be a better way to be able to do this, if we were going to effectively remediate customers in an appropriate timeframe.

35 And there was also a community expectation around the timeliness with which you would carry out remediation?---Well, there's certainly a community expectation about that, but it was more important to AMP that customers be remediated as quickly and as completely as possible.

40 I understand. The – in the most extreme case where you are talking about customers who might have been charged fees, but not had services provided at the beginning of 2008, you were facing the prospect that it could take up to 17 years after they had been charged those fees for them to be remediated?---Yes.

45 And the board felt that was unacceptable?---Yes.

And I think you would agree the community would also think – the Australian community would think that is unacceptable?---Yes.

And ASIC, the regulator, also thought it was unacceptable?---Yes.

5 And, in June of 2018, the board was told that for AMP to achieve its objectives of accelerating customer remediation, there would need to be a significant reset of the review and remediation program?---Yes.

10 And the intention, as we understand it, since the fix and rebuild team was created in May 2018, is to commit to ASIC that customers will be remediated within three years?---That was the target.

15 And there was consideration, I think, of a few different timeframes or possible timeframes for remediation?---There were considerations of timeframes of three to five years initially. To challenge the process, I asked the question what it would take to be able to do it within 18 months, because I felt that customers needed to be remediated as quickly as they could. The response was that we physically could not get it done in 18 months, and three years was the – the most likely timeframe to be able to complete this.

20 And is it the case that, as at today, AMP expects to be able to complete the remediation within three years of 1 July 2018?---That is still our target.

And I think you have now 150 staff working on remediation?---Yes.

25 And the revised total estimate of the cost of the program is \$778 million?---Yes. That includes the – the cost to carry out the program - - -

Yes?--- - - - to its completion.

30 That's both – I say both. It has, effectively, four lots of costs in it. It has the cost of remediation together with lost earnings for inappropriate advice?---Yes.

It has the costs of remediation together with lost earnings for fees for no service?---Yes.

35 It has the costs of carrying out the reviews necessary in order to remediate for inappropriate advice?---Yes.

40 And it has the costs of carrying out the reviews necessary in order to remediate for fees for no service?---Yes.

And that's what makes up the \$778 million?---Yes.

45 And that amount of \$778 million doesn't include any recoveries from advisers or insurers?---No, it's a gross number.

But, presumably, those are two possibilities that AMP would pursue, either to see if it could recover some of this cost from its advisers or to claim on insurance policies it might have the benefit of?---Yes.

5 And I think it might be helpful, given the disparity between the \$290 million in post-tax provisioning and the \$778 million as the revised total estimate, if you just explain what the reason for that difference is?---The – the post-tax amount of \$291 million equates to about \$415 million on a pre-tax basis. AMP already had made a provision of around \$50 million that was there as at 31 December 2017. There are then those
10 costs that were mentioned to run the program. We have said that we expect that that will be \$50 million per annum post-tax for three years. So roughly \$200 million. So it's getting into that – into that order of – of where the \$700 million comes from.

I see. Now, the expectation that the remediation will be completed within three years
15 of 1 July 2018 is based, as we understand it, on two assumptions. The first is that no further problems are identified?---We will deal separately with – with further problems. The 150 staff that you mentioned are broken into three groups. One of those groups is looking at ongoing issues, but it also – our estimate at the moment is based on the samples that we have done. And we believe that it's the best estimate
20 that we can make from those samples at this time.

The other assumption is that AMP is able to agree and agree quickly with ASIC on its approach to remediate?---Yes.

25 And, as of yet, AMP has not been able to reach an agreement on a number of policy positions with ASIC?---We have agreed a number of positions with ASIC. I think there are still two matters that are outstanding.

And what are those matters, Mr Wilkins?---One of those relates to the evidence that
30 will be acceptable for service having been provided, in that we have suggested that testimonials from customers that they have received the service would be appropriate. That hasn't been agreed with ASIC as yet. And the second one is the treatment of issues where we find a – a fail from delivery of service, but not in respect of the entirety of the – of that service. That is, that some services were
35 provided, and it's a question around not whether that's a fail or not, because we've said that we accept that that is a fail; it's a question around the quantum of remediation.

And so, if we take each of those in turn, the issue about testimonials is that ASIC
40 would like you to have your own records of having provided some sort of service?---Yes.

Rather than advisers now going to customers and asking them to sign something to say they were provided with service 10 years ago?---Yes.

45 And, as to the issue of quantum, is that concerned or related to a particular issue, which is you might have an ongoing service fee agreement that requires the adviser

to carry out an annual review, but also provides that the adviser will do certain other things, like send newsletters, or something along those lines?---That would be one of the issues, but it could be also that the adviser will help with some particular tax advice at some stage during the year, will review a Centrelink position if some
5 circumstances change. And in those situations we believe that that was agreed with the customer, that part of the service was given. And we think that it would then be inappropriate to refund all of the fees because some of the service had been given.

I understand. It's not an issue that AMP is taking the position, for example, that it
10 may not have provided the annual review, but it did provide – it did send out newsletters or something like that, so, therefore, it should be entitled to retain some amount of the fee?---No, it's more particular to some of the – the subsets of service that were in the fee statement, and the fact that those subsets were delivered to the customer.

15 There was an issue as at September of this year about the customers that were in scope for the review and remediation, and particularly customers who paid under \$500 per annum?---Yes.

20 And AMP had been seeking to exclude customers who paid under \$500 per annum from the review and remediation program?---Yes.

And the total amount of fees relating to those contracts in the period 1 July 2008 to
25 31 December 2017 was \$158 million?---Of that order.

And there were about 271,000 customers who fell within that – sorry – customer
contracts that fell within that category?---Of that order, yes.

And ASIC said those customers shouldn't be excluded?---Yes.

30 And has AMP now agreed to include those customers?---Yes.

And what was the reason that AMP had initially sought to exclude them?---We
35 believe that at less than \$500 in terms of the – the total fee, that it was more likely to be general advice, rather than personal advice, and could be excluded from the – from the process.

I see. Until AMP agrees with ASIC on these final policy issue, it's continuing to
40 remediate in accordance with the baseline approach?---Yes.

And that means it's continuing to remediate on the basis of an approach estimated to
take nine years?---Yes.

45 And do you regard that as a satisfactory situation?---I would like to – I would like to finalise the agreement with ASIC. We did say that we expected that the remediation under the revised proposal would commence in the last quarter of 2018 and we are still hopeful that we will be able to begin it at that stage. And we – if we are able to

do that, we still remain confident that we will be able to remediate customers within three years.

5 And what happens if ASIC won't move?---I believe that ASIC will – will move. We have a cooperative relationship with ASIC. We've been able to deal with a number of differences between the groupings, and we've come to – to those final two issues that are now outstanding between us. And I'm sure that we will be able to resolve that. The relationship has been good, as we've gone through this process, and I think both ASIC and AMP want to see customers being remediated.

10 The position as at September of this year, and I think as of now, is that AMP has not paid compensation for fees for no service other than in respect of fees for no service issues that had previously been reported to the regulator?---Yes.

15 And so those types of issues that had previously been reported to the regulator were things like BOLR and the ring-fencing conduct?---Yes.

20 And I think I, effectively, asked you a double-barrelled question so I should check. It was the case that as at 31 October 2018 that AMP still hasn't remediated anything for fees for no service under this review and remediation program?---Not under the revised program. We need to reach agreement with ASIC before we can commence that.

25 I think the review and remediation program is concerned with things other than things like BOLR and ring-fencing that had been separately reported to the regulator?---Yes.

30 So the things that have been separately reported, like BOLR and ring-fencing, that has been dealt with separately for remediation?---Those customers have been remediated.

35 Yes. The review and remediation program and its more general concern with the extent of fees for no service has not yet – had not as at 31 October 2018 paid anything for fees for no service conduct to customers?---No.

And, as at today, it still hasn't paid anything?---No.

40 I want to move now to deal with understanding the size of the problem and the problem confronting AMP. One of the problems that AMP has had is in ascertaining the number of customers and the amount for remediation?---Yes.

45 And, as at 31 March 2018, the AMP board was told that each month the level of knowledge on potential compensable events improves, but for most remediation activity accurate determination of the compensable amount for any given client is not known until almost immediately prior to payment?---Yes, because we were doing that on a file-by-file basis, and we needed to actually look through each of those files to determine it.

So now you've changed your approach and that's how you've come up with your revised estimate, by attempting to apply some sort of analytics to make an estimate of the amount for fees for no service?---Yes.

5 And, once you've made that sort of estimate, if we just think about the numbers and go back to the figures that were in your schedule, in your schedule you have an estimate of \$359.7 million for fees for no service?---Yes.

10 And is that amount arrived at by excluding the fees that were under \$500 per annum?---No. It includes the fees under \$500 per annum based on some of the further sampling that we have been able to undertake.

Okay. And it's for the period from 1 January 2008 through until when?---Until 30 June 2017.

15 And the estimate of the total amount of ongoing service fees that was taken in by AMP during that period is in the order of a billion dollars?---Over that period, yes.

20 And so that would suggest that more than a third of the ongoing service fees that were taken in by AMP over that period will need to now be refunded?---This also includes compensation for the – for the lost earnings - - -

25 Lost earnings. I see?--- - - - over that, which compounds over – over a considerable period of time.

So it's less than a third then?---Yes.

30 Do you know what proportion it is?---I can find it, Mr Hodge, but I don't know it off the top of my head.

Is it – presumably, it must be something in the order of at least 20 per cent once you take into account or discount for lost earnings?---Possibly of that order. I'm just not sure.

35 Is that something that you've turned your attention to, trying to understand what proportion of the total ongoing service fees taken in over that almost 10 year period were for services that were never provided?---Yes. Yes, I have. And our – our sampling has shown that the major timeframe that there were issues were from 2008 until 2015. Subsequent to that time that we've seen that there has been a
40 considerable tailing off in terms of incidences of fee for no service.

45 And presumably a reason for that is that from – from mid-2015 it was necessary – the two-year period hit for clients to have to opt-in to continue their ongoing service agreements?---That would be one of the reasons, but I think, also, our processes and procedures have become better over time, such that we are seeing significantly less instances today than we were even two years ago.

Are you also seeing a significant decrease in the value of ongoing service fees that are charged?---Not overly.

But some decrease, presumably?---Some – some decrease.

5

And what does it say to you about the quality of your adviser network that there was this significant or meaningful amount of fees being charged up until 2015 for services that were never provided?---I think that it says that our adviser network, upon the – upon the beginning of the FOFA reforms were still finding its way in terms of the new world of fee for service. And it has taken some time for the understanding to be well placed, as well as just some of the reforms in terms of the educational undertakings that AMPs licensees have been putting into the – into the network, together with some of the audit processes and the changes that we've made to those processes over time has – has improved the outcomes.

10

15

It's odd, though, isn't it, because AMP tried to get the jump on commissions being removed and switched to fees for service in mid-2010, didn't it?---That's my understanding.

20

So does it seem surprising to you that five years – or it took five years after AMP had switched over to a fees for service model for its advisers to understand that they needed to provide services in exchange for the fees?---I think that a number of them did understand that, but also a number did not. And as – as the educational standards have improved, as the policies and procedures that AMP has put in place have tightened up, we've seen an improvement in that.

25

AMP is the one that actually collects the money from the clients' accounts or Wealth products?---Yes.

30

And then it distributes it to the authorised representatives and the advisers?---Yes.

And AMP is the one who switched in 2010 from commissions over to fees for service?---Yes.

35

And do you regard it as a failing, then, on the part of AMP back in 2010 and for the next five years not to have adequately educated its adviser network that they needed to actually provide services in exchange for the fees they were charging?---Yes. Our policies and procedures were – were not appropriate or fit for purpose at that time.

40

Do you wonder, though, why it is that you would need to tell your advisers that if they're charging a fee for a service, they have to provide the service?---It would be a normal expectation that people would understand that.

45

Well, that's right. Outside of financial advisers, it's hard to think of any profession or group of people that think if they charge money for a service, it's okay not to provide the service?---You would think that where a fee has been agreed, the service would be delivered.

That's certainly what most professions are used to?---Yes.

5 What do you think it says about the cultural norms of financial advisers that that doesn't seem to have – not only not universally been the case, but to such a significant extent not been the case?---I think that the financial advice industry is improving. I think where it was coming from was a transaction-by-transaction type arrangement where commissions, including trail commissions, continued. And there was, in the case of that environment, no expectation that services would be delivered for those trail commissions.

10 If we sort of cut to the heart of it, until the switch to fees for service, financial advisers were, effectively, a distribution network or channel for Wealth products and insurance products?---Yes.

15 And they were paid commissions by the manufacturers of the Wealth products or the insurance products in order to distribute the products to consumers?---Yes.

And they didn't – they were paid trail commissions ordinarily as part of that?---Yes.

20 And they didn't need to provide a service to the consumer in exchange for the trail commission?---The commission was being paid by the product manufacturer.

25 That's right. It was a payment by the product manufacturer. It didn't require them to provide any service to the consumer?---No.

30 What it likely did was to command some loyalty from the adviser back to the product manufacturer so that they wouldn't switch the client to a different product?---Yes. The trail commission was in recognition of the – of the product remaining in force with the company.

35 And the mental shift that many financial advisers seem to find difficult was to understand they were no longer a distribution network for product manufacturers; they were now professionals providing advice and acting in the best interests of clients?---That was certainly a significant change for a number of people in the advice network, particularly at the introduction of the FOFA reforms.

And was it also – well, it must have been a change for AMP pre-FOFA, because AMP had switched to fees for service back in 2010?---Yes.

40 But the issue also seems to be one that AMP needed to switch its mentality, because it was, up until it switched to fees for no service, a product manufacturer that owned an advice network that it used as a distribution network for its products?---Yes.

45 And is it fair to say what seems to have happened is that it switched to fees for service, but they were fees for service in name only. They were really treated by many as simply trail commissions continuing?---Certainly the – in a number of

instances, the services were not being provided. So I think that the change in approach needed to be both within AMP, but also from the advisers themselves.

5 We will come back at the end to the change within AMP. What I want to move to now is the BOLR and ring-fencing conduct. You were also asked to address what's referred to as the BOLR and ring-fencing conduct that was examined in round 2 of the Commission's hearings as part of your statement?---Yes.

10 And the broad strokes of that conduct were that fees were left on – according to a business rule, that those fees could be left on for a period of time, generally three months or 90 days, before a client who had been left without an adviser was transferred over to a new adviser?---Yes.

15 And AMP initially made a breach notification to ASIC in May 2015 about clients being charged fees when they were kept in the BOLR pool?---That's my understanding.

And that was before you joined the board of AMP?---Yes.

20 And at the time that was described as a failure of system processes?---That's my understanding.

25 And then, on 23 November 2016, ASIC was told that this, what is referred to as the 90 day exception, had continued to occur after 2016 – or it continued to occur into 2016?---Yes.

And that a direction had been given on 15 November 2016 to cease the practice immediately?---Yes.

30 And I think this year, on 17 October 2018, AMP notified ASIC that the practice had been intentional?---AMP notified that there had been a business rule that was in place that had – had led to the outcome that you describe.

35 Yes. Is there something about my use of the word “intentional” that you're disagreeing with there? The business rule was – had an intentional consequence, didn't it?---The business rule was that – that those fees would be left on for 90 days.

And AMP had reported this conduct as a breach on 3 May 2017?---Yes.

40 Now, AMP has to date remediated about \$3.7 million to 15,712 customers for the BOLR and ring-fencing conduct?---I think the – the total remediation is \$4.7 million to those 15,712 customers.

45 Thank you. And the remediation, as you understand it, is now complete?---Yes.

The BOLR and ring-fencing conduct could only occur where there was an approval of the exception or an approval of the application of the 90 day business rule by the

managing director of the advice licensee?---Where the business rule was being applied, I think in some of the instances there were administrative errors that also contributed to that where the fees just were not turned off through administrative issues, rather than a decision made around the application of the business rule.

5

Certainly in some cases a specific approval was given by the managing director to allow the fees to continue?---Yes.

10 And it was convenient or financially beneficial to AMP to keep the fees turned on, because then the book of clients would be more valuable to AMP when it on sold it to an authorised representative?---Well, it would certainly maintain the value if that book was going to be on sold, if it was in the resale pool.

15 Well, if it wasn't maintained, then it would be financially detrimental to AMP?---Yes.

20 And that, it would seem, is the fundamental reason that AMPs senior managers and the managing director were happy to allow the fees to continue to be charged, because it was financially advantageous for AMP?---I don't know what the specific reasoning for it was. Certainly, AMP would have benefitted from the fees, in the sum total all up of that instance of \$4.7 million. But I can't speak for what the particular issues may have been, because there could have been things such as just administrative ease of not turning them off and a belief that – that services would be provided once the book had been either on sold or another adviser had been assigned
25 to them.

I see. You say in your statement that AMP has made a number of changes to address the BOLR and ring-fencing conduct?---Yes.

30 And the first change is that AMP received assurance from Deloitte that the 90 day exception ceased to operate from November 2016?---Yes.

35 The second change is that AMP has reinforced existing policies concerning fees for no service?---Yes.

The third change is that AMP has made enhancements to the control framework of its advice licensees?---Yes.

40 The fourth change is that Clayton Utz was asked to conduct an investigation in relation to the conduct?---Yes.

The fifth change is that Deloitte has conducted a cultural audit?---Yes.

45 And that's known, I think, as Project Luminous?---Yes.

The sixth change is that there has been an external workplace investigation known as Project White?---Yes.

And the seventh change is that you say consequences for particular employees involved in the BOLR conduct and ring-fencing conduct have occurred?---Yes.

5 And there were, as we understand it from your statement, one executive whose employment was terminated?---Yes.

Four managers and executives who had their deferred incentive payments forfeited?---Yes.

10 And one manager received a written warning?---Yes.

Now, one of the other changes that you refer to and that we mentioned a moment ago was the culture audit that was done by Deloitte?---Yes.

15 And that was conducted by Deloitte into AMPs risk culture?---Into the culture of the advice business.

I'm sorry, the advice business's risk culture. Is that right?---Yes.

20 And when did Deloitte commence that audit?---I can't recall, Mr Hodge, I'm sorry.

That's all right. But it finalised its report in about July of this year?---Yes. Around that time.

25 And AMP is currently conducting a risk culture project?---Yes.

And the working group within AMP carrying out the project is to develop, implement, monitor and evaluate the program of work to address the risk culture issues identified in the advice business and more broadly where relevant?---Yes.

30 And that, in turn, has led to the generation of, I think, something called a summary of risk cultural themes?---Yes.

35 And that has then been incorporated into something called Project Green?---It has been a consideration for Project Green, which is the self-assessment that AMP is undertaking for – for APRA in respect of the report that APRA produced on CBA.

40 Now, as at September 2018, as we understand it, the view being reported to the board was that additional work has been completed to address the risk culture?---There has been some additional work done, yes.

45 And within advice and, more broadly, work to clarify and reinforce expectations of leaders has commenced for all leaders and will be used to reinforce expectations and risk management accountabilities?---Yes.

Is there a concern that, even as at today, the leaders within the advice business may not understand the expectations of at least the AMP board in relation to risk

culture?---No, I think that the leaders in the advice business today are very well aware of the expectations in regard to the risk culture and behaviours that we expect to see.

5 I see. You say in your statement that you consider it improbable that the relevant conduct, that is the BOLR and ring-fencing conduct, would occur within AMP in the future?---Yes.

10 And is that because of those seven changes that we've talked about – or seven things that have been done?---Yes. And particularly the – the procedural changes and the reinforcement of the policies that existed at the time that the BOLR conduct was being undertaken. But we've reinforced the importance of turning fees off where no service can be provided.

15 Is it fair to say, do you think, that even today there continues to be some risk within AMP that the charging of fees for no service – or the inappropriateness of that conduct is not fully understood as being unacceptable?---I don't think that that's a correct statement. I think that certainly people within AMP, and particularly in the advice business, are very well aware of what is acceptable and what is not
20 acceptable.

I think, as you know, and as we referred to before, AMP had told ASIC in November of 2016 that a direction had been given to cease the retaining of fees when clients were transferred into BOLR?---Yes.

25 And Deloitte had conducted an assurance review to confirm that the conduct ceased in November of 2016?---Yes.

30 But on 31 May 2018, AMP made a breach notification to ASIC regarding intentional conduct by the managing director of one of AMPs advice licensees of keeping fees on while clients had no adviser?---Yes. We made that advice, but it was a different issue to the BOLR issue.

35 Well, that conduct occurred in December of 2017?---Yes.

40 And when you say it was a different issue, is – different in what respect?---The adviser concerned was being off boarded for compliance issues and was in the process of attempting to sell his book at that time. It was not coming into the AMP BOLR pool, nor was it being ring-fenced for any further sale. The instruction was given to turn the fees off, and in a number of instances those fees were turned off.

I'm sorry. The instruction was given to not turn the fees off?---The instruction was given to turn the fees off.

45 It was overridden, wasn't it, by the managing director?---Yes.

So the policy of AMP, which is the fees should be turned off, was attempted to be implemented?---Yes.

5 But the managing director of the advice licensee overrode that policy and wanted to keep the fees on?---Yes.

10 And the breach report said that the breach indicates a lack of understanding and significant error of judgment on the part of senior employees of the advice licensee as to the circumstances in which ongoing service fees could be left on following a compliance termination?---That is what the notice to ASIC said. I should point out, though, that in this situation the matter was immediately escalated within the advice business and the decision was overturned within four days of the instruction having been given by the then managing director, which meant that the issue was contained. But it also showed to me that the policies and procedures that we had put in place, 15 and the knowledge that people inside the advice business had, was effective and was working, the fact that people were prepared to call that – that issue out.

I see. Now, as at June 2018, Deloitte was still undertaking or undertaking work to unequivocally confirm whether there are any further instances of fees charged for no 20 service to customers in the BOLR and licensee orphan pools due to administrative errors?---I'm not aware of the date of that. I'm not aware of that situation in 2018.

25 You're not aware – I'm not saying that it is continuing; I'm just saying you're still doing work – in the middle of the year you were still doing work to confirm that it had been turned off?---I'm – I'm not aware of that, Mr Hodge.

All right. And, as at September 2018, AMP is undertaking work within advice and, more broadly, to clarify and reinforce expectations of leaders and has commenced that work for all leaders?---Yes.

30 And that's to be completed by December of 2018?---That is the target date.

35 Is there a concern within AMP that, even now, it still needs to do a lot of work to ensure that its senior leaders understand the culture in relation to risk and compliance that the AMP board wants?---The work is ongoing, but I do believe that there is a much better awareness now of the risk and compliance culture that is expected, partially as a result of some of the consequences that have been shown for previous behaviour, but also partially through the reinforcement that we have put in place, in terms of the policies and procedures and, more particularly, what is expected of 40 people inside AMP.

45 In terms of that culture that you're trying to encourage, is one of the issues that AMP is still waiting for the new CEO to commence in order to shape what I think you refer to as the culture aspiration of AMP?---A new CEO is coming into the organisation and has been given a mandate to transform the organisation. However, one of the things that I tried to do during my time as acting CEO is to be very clear about what behaviours are acceptable and what behaviours are not acceptable. And that has

been communicated right through AMP. And I don't believe that the new CEO will have a changed view around behaviour which is acceptable and behaviour which is not acceptable.

5 Given your very significant experience in corporate life before you came to AMP, do you have a view as to what it is that has gone wrong in AMP in terms of its culture and the ability of its employees to know what is right and what is wrong?---I think that part of the issue has been the lack of clarity around what is acceptable, the lack of consequences that come from inappropriate behaviour. But that has been
10 compounded by an underinvestment that AMP has made in its risk and compliance and governance systems, which we're attempting to address now.

I can understand that there may be – may have been and has been an
15 underinvestment in the risk function within the business, the processes and compliance processes within the business. That's the last point that you're making?---Yes.

I'm wondering, though, how does a culture develop within an advice business where anybody thinks it's okay to charge money for a service and not provide the
20 service?---I don't think I have an answer to that, Mr Hodge.

I suppose, one of the reasons why that would seem to be a very interesting question is because it would seem logical that in order to understand how to change that culture, you would need to understand how it has arisen in the first place?---We have
25 attempted to understand that through staff surveys and other means, but I don't think that there's any one particular issue that stands out that says that's the root cause of the issue. What my concern has been is to make sure that people understand what is expected of them now, what behaviours are acceptable, and to then make sure that the organisation is backing that up with appropriate controls and processes and
30 systems to be able to capture issues when they arise, or, preferably, to make sure that they don't arise in the first place.

And so what – I think the point you're making is you, as the acting CEO, it's impossible now for you to go back to a period of time when you weren't even
35 involved in the business to try to understand how it is that this culture had developed in the first place. What you have to do is, from the top, instil the right values and the right culture within the business?---Yes.

And that's what you've sought to do to make sure your employees have complete
40 clarity as to what you regard as right and wrong?---Yes.

And, by doing that, the business will hopefully reinforce the correct ethical norms?---I think it's important that the right tone is set by the leaders in the organisation, and that everyone is well aware of what is expected of them. And
45 certainly, in communications that I have sent, as well in – as in those of other members of the leadership team at AMP that has been made very clear. But I think it is important that leaders walk the talk in terms of what they're doing in that regard.

And one of the ways in which you reinforce to your employees what conduct is acceptable and unacceptable is by showing demonstrable consequences for those employees who step outside of acceptable behaviours?---Yes.

5 And that's what you've sought to do in relation to the BOLR and ring-fencing conduct?---Yes.

10 Can I turn then to a related topic, which is about the relationship between AMP and its advice licensees, and, together with that, the remuneration and professionalisation of advisers. In July of this year you began to consider how to reduce both the conduct and the compliance risk in the advice business?---Yes.

15 And one of the propositions that you put forward to the board was that this might be done by exiting smaller, less productive practices and reducing the extent of adviser incentives and payments?---Yes.

And that strategy was considered at the July 2018 board meeting?---That's my recollection.

20 And AMP's strategy that it now has for the period 2018 to 2022 is to transition AMP from primarily a face-to-face, aligned advice channel structure to a set of more integrated and digitally-enabled channels that broadens customer reach and delivers advice with greater efficiency and lower risk?---Yes.

25 And that strategy, as we understand it, recognises a number of things. First, that there's increased regulator scrutiny in relation to the advice businesses?---Yes.

30 Second, that there are higher professional standards that will be applied, and that could result in – I think the estimate is 20 to 50 per cent advisers exiting the industry?---Certainly 20 per cent, we think, will exit.

35 Third, that there are significant economic shifts that have occurred post-FOFA which changed the way in which advisers are remunerated and the risk reward structures?---Yes.

Fourth, that there are significant advancements in technology which present both opportunities but also threats to the existing business models?---Yes.

40 And that would particularly be things like what's sometimes referred to as robo advice?---Yes.

And, fifth, that there are shifts in consumer expectations and demographics?---Yes.

45 Now, AMP remunerates the authorised representatives through what are known as the settlement and recognition terms?---Yes.

And AMP also conducts a development, management and advice scheme?---Yes.

And the way that that scheme operates is that a practice is ranked by reference to a balance scorecard?---Yes.

5 And the ranking that the practice receives is applied to the revenue of the practice?---It's – it is a percentage of the revenue of the practice that is generated for the previous year, is my understanding.

Right. And what it - - -

10 THE COMMISSIONER: I will just have to ask you to keep your voice up a little, Mr Wilkins. Thank you. Yes. Go on.

MR HODGE: Now, if we just go back, you have a ranking of the practice. The ranking of the practice is used in order to generate, effectively, a multiplier that is applied to the revenue of the practice for the preceding year in order to come up with something like a bonus that's provided to the practice?---It's a – it is a development, management and advice reward which is based, as you said, on a balance scorecard, but it is aimed at ensuring that practices are passing audit, are continuing to show – or meet their continuing professional development obligations that they have, has a business plan that is viable and is demonstrating growth against that – against that business plan. To be eligible, you have to actually be able to – to meet those criteria. If you don't, then there is no payment.

25 I see. As we understand it, AMP has recognised internally that it needs to change the incentives that it offers to authorised representatives?---We are certainly looking at the DMA arrangements. They are under active consideration right now.

30 And the DMA arrangements are this development, management and advice program and this type of bonus structure that you have?---Yes. This is – that is the structure, yes.

35 But the challenge for AMP is that this involves – or seems to involve moving away from the use of its adviser distribution channel?---We think that there will always be a role for face-to-face advice. What we do think, though, is that technology can be used to both assist in the professionalism and the productivity that comes from that face-to-face network. We do think that there can be greater compliance and other productivity tools also built in through the use of technology. I think that there is a place for robo advice, which you mentioned earlier, but I think it's – it is somewhat limited, because of the generic nature that we're talking about. What we are seeking to do is to supplement the – the face-to-face channel with productivity tools that enable it to be able to deliver better advice on a more efficient and effective basis to our customers.

45 Do you think the reality is that the number of Australians that actually require ongoing face-to-face advice is much more limited than it might seem when you look at the number of Australians presently being charged ongoing advice fees?---No, I don't. I think that advice is an important component for most Australians. Sadly,

not enough Australians actually take advice. And I think that they and ultimately the nation will be worse off for not taking that advice.

5 There's a difference, though, isn't there, between taking advice and needing ongoing advice over the course of your life and paying for it?---That becomes an individual choice as to whether you see the benefits of having an ongoing relationship, or whether you want to deal on a transactional basis. The advice network can cater for both of those scenarios.

10 I think you've made the point in one of your papers that most Australians will need some sort of financial advice at some point in their lives?---Yes.

15 That, though, seems to carry with it the sting that most Australians probably don't need ongoing advice every year for their entire working lives?---I don't know that I would characterise it as most Australians. I think that each customer is different, and their needs are different, and what we need to be able to do is to make sure that the product and service offerings that we have, particularly the service offering, caters to that need.

20 Has AMP thought about this? Has it conducted any sort of investigation or research to try to figure out whether the number of customers it presently has signed up to ongoing fee agreements reasonably reflects the number of customers that actually have a need for ongoing fee?---Not to my knowledge.

25 And doesn't that seem like a fundamental part of understanding where the AMP advice business is at, because if, for example, realistically, only 20 per cent of the customers presently on ongoing fee agreements actually need to be on ongoing fee agreements, then that suggests there's a lot of Australians paying for advice they don't need?---I think that the ongoing fee agreements are transparent to the
30 customers and the customers need to – are the ones that will ultimately elect where they want to go, in terms of either ongoing fee agreements or in terms of the – of advice at specific stages.

35 One way to make it even more transparent than it is would be to require opt-ins every year, rather than every two years?---We think that every two years is appropriate, given just the administrative burden that would be there for the customer, but also for the adviser. But, further, we think that some improvements can be made in that in that two-year scenario. If there – if there is not an opt-in, then there would be a unilateral turning off of the fees, rather than it continuing. We think two years is a
40 more optimal timing than one.

45 And why is that? Two years just seems entirely arbitrary, save that it means the financial advisers don't need to get their fees reauthorised every year?---I think there's an administrative issue that comes with it, including the administrative issue that would be there for the customers, as well as for the advisers.

That's not really an answer, is it, because on that basis you could say the – if you only have to have them opt in every 10 years, then that would be more administratively convenient to both the financial adviser and the customer, as well?---Of course.

5

So that doesn't really tell us what is an ideal length. It doesn't tell us anything, I don't think?---We feel that two years is the appropriate time if have an ongoing relationship, to renew that. But other time periods may also be appropriate.

10 You have to give a fee disclosure statement every year?---Yes.

So there's already – it's not as if you're not in a position where you don't have to send something every year anyway to the client?---That's true.

15 And it's not as if there's some significant extra burden involved in actually providing advice, because the premise of it is you're providing ongoing advice throughout the year?---Yes.

20 It's just very difficult to see what the justification is, other than it might be financially detrimental to AMP, because customers would more often reflect upon and decide to turn off their ongoing fees?---I don't know that your last statement actually follows from that. If customers are getting service and are finding value in the advice, then I don't see that they would – they would turn their – want to turn their fees off. That's entirely their choice, of course.

25

And what about requiring the product manufacturers to confirm at whatever the opt-in period is that the client has opted back in to pay the fees. Is there any reason in AMPs view not to do that?---No, and we support that. The – in one of the submissions that we have made to the Royal Commission, we have said that in the event that there is not obvious opt-in after two years, then the fees should be turned off.

30

And what about having ongoing fees charged out of superannuation products? Does AMP have a view about that?---It depends on the nature of the superannuation fund and the advice that is being given.

35

And if we just try to tease that out. If it's a MySuper product – and it's very difficult to see what justification there could be for ongoing fees to be paid out of a MySuper product?---Yes.

40

If it's a self-managed superannuation fund, then it may make more sense to have ongoing fees paid out of that product?---Yes.

45 If it's some sort of choice product, then – but not – well, a choice product within one of the funds operated by an AMP trustee, then what about then? Where does the balance lie, in AMP's view?---I think in that scenario it does come down to the decision of the customer and how often that choice is being exercised.

That is, if the customer is choosing to go into a particular choice growth fund that AMP is operating and they're planning to leave their money there for the next 25 years, it doesn't really make a lot of sense that they're paying an ongoing advice fee coming out of that fund?---In that scenario, you could say that, yes. It depends on –
5 on the nature of the fund and what other service or advice was being given.

More like – well, they can only – the whole point is if they're paying fees out of their superannuation product, they can only get advice in relation to their superannuation in retirement, can't they?---Yes.
10

So it can't be for anything else other than superannuation, really?---No. No, it can't. But it can be a change in strategy that may be warranted, given a change in circumstances for those people.

15 Can we move, then, to grandfathering. In July of this year, the board considered a memorandum in relation to grandfathered commissions?---Yes.

And the memorandum said that the removal of grandfathered commission would impact several areas, including reductions of approximately 20 per cent in practice revenue?---Yes, that's my recollection.
20

And an increase in BOLR update?---BOLR?

I think it's BOLR update. But, in any event, an increase in BOLR activity is probably the point?---There is a potential for an increase in BOLR.
25

And any removal of grandfathered commissions would reduce the projected returns on BOLR buy-back and servicing strategy?---Yes.

30 AMP has made a number of statements in its submission to the Commission in response to the interim report about the removal of grandfathered commissions?---Yes.

And AMP says that the passage of the FOFA legislation was highly contentious, and that it is doubtful whether the FOFA legislation would have passed at all and become law had the Minister not provided reassurances to advisers that commissions would be grandfathered?---Yes.
35

And AMP has questioned the statement in the interim report that grandfathering arrangements were temporary and exceptional measures?---Yes.
40

And AMP has relied upon a submission of treasury in support of the proposition that ending grandfathering would be complicated and difficult to legislate?---Yes.

45 And AMP has also relied on a submission of treasury in support of the proposition that ending grandfathering could negatively impact the viability of some financial

adviser practices with implications for their owners, employees and customers?---Yes.

5 And AMP has also submitted that there may be constitutional issues associated with banning grandfathered commissions?---That was in response to one of the rounds of the Royal Commission, I think. Our position on grandfathered commission has moved on from that time.

I think - - -

10

THE COMMISSIONER: Sorry. I don't understand what you mean it has moved on since that time?---Commissioner, we've – we have reviewed the position of grandfathered commissions and are now saying that we favour a phased approach to remove grandfathered commissions.

15

MR HODGE: I think, just to be clear – and we can bring up the submission, if necessary, you've still submitted, even in response to the interim report, that there may be constitutional issues associated with banning grandfathered commissions?---Yes.

20

But you've said, ultimately, AMP does not now oppose moving away from grandfathered commissions in light of community sentiment surrounding grandfathered commissions?---Yes. And with consultation with the industry over the timeframe for - - -

25

Over the time period?---Yes.

And AMP has submitted that a reasonable transition period is required to provide sufficient time for industry participants to implement required changes?---Yes.

30

I just want to understand some aspects of that. The industry was consulted on the FOFA reforms in 2011?---That is my understanding.

35

AMP had already moved from commissions to fees for service in 2010?---For investment products.

I see. The FOFA reforms commenced on 1 July 2012?---12, '13, of that order, Mr Hodge.

40

I think compliance was required by 1 July 2013?---Yes.

ASIC allowed a further period of 12 months where it had adopted a facilitative approach to compliance?---My understanding again, Mr Hodge.

45

And almost eight years have now passed since the industry was first consulted about the FOFA reforms?---Yes.

How can it really be that more time is needed to implement the required changes?---I think that in respect of some grandfathered commissions, services are being provided for that – that remuneration. And there is a time that will be necessary for advisers to be able to go and make alternative arrangements with their customers to change the
5 basis of their remuneration from their grandfathered commissions to a more contemporary fee for service type arrangement.

That just seems like an extraordinary explanation for deferring it. Really, this is eight years after AMP itself switched over to fees for service, five years after the ban
10 commenced, four years after the end of the facilitative approach of ASIC. Surely by now, those advisers who are actually providing a service in exchange for fees have switched from grandfathered commissions?---No, I don't believe that that's the case, and certainly that's not what has shown from some of the – the work that has been done with the AMP advice network.

15 And so what proportion of the AMP advice network is providing services in exchange for grandfathered commissions?---I don't have a precise number for that. However, we have surveyed the network, and have found that there is service being given for where grandfathered commissions are being paid.

20 And is the assumption that whatever that pool of advisers is would provide the same services for the same amount, but just change it from a trail commission over to a fee for service?---That would be dependent on the arrangements that they reach with their customers.

25 The reality is, isn't it, that a ban on grandfathered commissions would significantly affect AMPs business?---There would be an impact on – on AMPs business, but that would not be a reason that we would oppose a total ban on grandfathering.

30 Well, you – you're now in favour of removing grandfathering?---We - - -

Subject to many qualifications?---Yes. We're saying that there would be a necessary period of consultation with the industry and a period to allow alternative
35 arrangements to be put in place.

Nowhere in AMPs submission - - -

THE COMMISSIONER: Just a moment, Mr Hodge. How long? You say a
40 necessary period. How long?---Commissioner, I think one year would be too short. Three years would probably be the maximum.

Yes.

45 MR HODGE: Nowhere in AMPs submission to the interim report is there a recognition of the effect that trailing commissions can have on the financial position of the client?---I don't recall that it's – that it's in that – that submission, no.

And the overall tenor of AMPs submission on grandfathered commissions is that, but for change to community sentiment, AMP would continue with grandfathered commissions?---Well, the grandfathered commissions are paid by the product manufacturer ,rather than by the client in this – in these scenarios.

5

But AMP is running an advice business where it moved its advisers – or supposedly moved its advisers to fees for service in 2010?---Yes.

10 And it still hasn't made the requirement – the required changes across its adviser network to move all of its practices away from grandfathered commissions on to fees for service?---It hasn't needed to do that, because the commissions were grandfathered.

15 And do you agree that trailing commissions are moneys that are paid, but are of no use to the client in the sense that they come with no contractual right on the part of the client to service?---Yes. The trail commission is paid by the product manufacturer.

20 What would be beneficial to clients is, if they're going to be paying amounts, that they be paid for service?---Yes.

25 And when you say the trail commissions are paid by the product manufacturer, that's true in the sense that they are deducted by the product manufacturer from either the assets of the client or the premiums paid by the client?---They – they would be built into the product pricing that the client has.

But they're ultimately paid by the client?---They're built into that – that pricing that the client pays.

30 And if trail commissions are ended, then, logically, the cost to the client would go down?---Yes.

35 So it's beneficial to the client to end trail commissions?---Yes, where service is not being provided, because in other scenarios there would be an alternative arrangement needed to be put in place.

40 Well, no, it must be beneficial because under the trail commission arrangement, as you keep saying, it's paid by the product manufacturer. There's no contractual right on the part of the client?---Yes, but where service is being provided for that grandfathered commission, then the adviser would seek to put an alternative arrangement in place with – with the client at that time.

45 And then the client would be better off, because the client would pay a fee and receive a service?---Well, the client would receive the equivalent service where it is being provided today, but the client would be the one paying the fee, as opposed to the product manufacturer rebating it.

In either world, the client pays the same amount of money?---The fee is built into the product at the moment where it is grandfathered. Where that would be removed then there would be a separate arrangement put in place with the client. I don't know whether the client would be better off or not, depending on the size of what the commission is today relative to what the fee might be for the services being given.

I'm just – I must say, this is an argument that I struggle to understand, which is the proposition that it is possible that there are Australians that are receiving more service than they are contractually entitled to, which is zero, when trail commissions are being paid than they would receive if they had a contractual entitlement to the service and were paying for it?---I'm not suggesting that, Mr Hodge. What I am suggesting is that fees are being – grandfathered commissions are being paid in lieu of fees from the customer. And I can't tell you with precision whether the client would be better off if those grandfathered commissions were turned off and it went to a fee for service arrangement with the customer, because, conceivably, those fees could be greater than the grandfathered commission today.

THE COMMISSIONER: If the customer agrees to pay it?---If the customer agrees to pay it.

And if the customer doesn't agree to pay it, so be it?---Yes.

Yes.

MR HODGE: That – surely, you must agree, that is in the interests of consumers?---Each – each consumer will have a different view on this.

We might switch to a different topic. Can we talk about the sale of your Life business. As at October 2018, AMP was operating outside of its risk appetite for debt rating outlook operational risk, profit at risk and reputational risk across all stakeholder groups?---Yes.

And this was to be addressed by, among other things, Project Aqua and the Rebuilding Trust Program?---Yes.

Is it Project Aqua? Am I pronouncing that correctly?---Yes.

Project Aqua is the sale of AMPs life business?---Yes.

And AMP announced the sale on 25 October 2018?---Yes.

And it's part of the plan for simplification of AMPs Wealth business?---It is part of the overall plan to continue to invest in those businesses where we see greater growth and to recycle capital from those businesses where we do not see that opportunity.

I see. You know that the chair of the AMP trustees met with APRA about the proposed sale in September of 2018?---I believe that's the case, yes.

And are you aware that the chair of the trustees and APRA discussed that the transaction, that I, the sale of the life business, will necessitate the replacement of the existing related party arrangements between the trustee and AMP Life as administrator?---Yes.

5

And that APRA saw this as an opportunity for the trustees to refresh their approach to the related party arrangements, including benchmarking product offerings and related party arrangements generally, including performance monitoring?---I'm aware that that was discussed.

10

In your statement you say:

For the products that are being transferred as part of the proposed sale, the trustee will be changed to a new trustee.

15

?---That's my understanding.

And, for those products, it is expected that AMP Life will continue as the administrator of those transferred products?---Yes.

20

And for the products that are retained by AMP, the trustees, in conjunction with AMP, will consider their options for the administration of these products?---Yes.

And if any part of the administration of these products is to be outsourced, this will occur in accordance with the trustees' outsourcing policy?---Yes.

25

Does AMP yet know what are the transferred products and what are the retained products within superannuation?---No. That is still being worked through.

30

I see. Do you agree with APRA's view that the proposed sale represents an opportunity for the trustees to refresh their approach to related party arrangements?---The trustees will look at the arrangements through the eyes of the – of the members, and will make the – their decision in the best interests of those members.

35

One of the things you say in your statement is that the trustees will continue to be managed by strong and independent boards?---Yes.

40

Do we take it from that that you see the trustee directors to date as having acted in a strong and independent way?---Yes.

You're aware that the AMP trustees recently reduced the administration costs on their generic lifecycle, MySuper products by 50 per cent?---By approximately 50 basis points, yes.

45

And – sorry – you're quite right. By approximately 50 basis points. And the fee reductions are now in effect?---Yes.

And they were significant reductions?---Yes.

They were prompted by APRA having identified the poor performance of AMPs MySuper products in October of 2017?---That was one of the considerations. I
5 didn't personally have a conversation with the trustees to understand the full range of considerations. But certainly there was a recognition that the fees were at the upper end of an appropriate scale.

You're aware that there was an issue raised by APRA – a question raised by APRA
10 in September of this year, after the round 5 hearings, about the fact that the AMP super trustee boards had not sought the reasoning for the proposed timetable for MySuper fee reductions?---Personally, I'm not aware of that, Mr Hodge.

You haven't been shown any document that records that?---Not that I'm aware.
15

I see. We might bring that up. Can we bring up AMP.6000.0343.0001. And if we go to page – sorry – I should just note these are the board papers from the meeting of the board of AMP Limited, AMP Life Limited and NMLA. See that?---Yes.

And then if we go to page 0094. This – actually, we should go back a page so you can see what this document is. So you see this is a letter sent by APRA to the chairman of the AMP trustees?---Yes.
20

And then, if we go to the second page, you will see what's recorded in that first
25 bullet point after the first sentence:

*It was stated that the AMP super board had not sought the reasoning for the proposed timetable for MySuper fee reductions. Noting that APRA was advised there would be a nine month gap between the initial reduction in fees at end
30 September 2018 and further fee reductions in June 2019, APRA expects that AMP Super will question the appropriateness of this and satisfy itself that this timeframe is in members' best interests.*

?---Yes.
35

Presumably, that letter having come as part of the board pack for the board of AMP, it's likely you would have seen that at some stage?---Yes, I would have read the letter.

And it seems implicit in that what is said by APRA, that the trustee board had simply accepted the timeframe put forward by the other part of AMP, rather than questioning itself what the timeframe was for the fee reductions?---Well, I wasn't part of the conversation, so I don't know what the – what the context of that statement was.
40

You're aware, though, of the evidence that was also given during round 5 about the approach of the AMP trustees?---Broadly.
45

Do you think – if you just take even just this point – that this is conduct that is consistent with a strong and independent board?---I think that board is certainly strong and independent in the way in which it looks after the interests of the members. and certainly part of that has been demonstrated through the reduction in fees that have been effected to date.

On a timetable determined by the product part of AMPs business?---Well, there are some times that – some lead times that need to be put in place for these things to take effect.

Without question by the AMP trustees?---Well, I think the decision has to be ultimately that of the AMP trustees.

But they haven't – you know they haven't sought the reasoning for what the timetable is?---That – this is what's in that letter. As I said, I wasn't privy to the conversations with them.

I see. Can I move, then, to another issue, which is - - -

THE COMMISSIONER: Are you tendering that - - -

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

THE COMMISSIONER: Minutes of the board of AMP Limited, AMP life and NMLA, 25 October '18, AMP.6000.0343.0001, exhibit 7.113.

EXHIBIT #7.113 MINUTES OF THE BOARD OF AMP LIMITED, AMP LIFE AND NMLA DATED 25/10/2018 (AMP.6000.0343.0001)

MR HODGE: I want to move, then, to some issues in relation to risk frameworks. It continues to be the case that AMP is exposed to what are described as a number of high residual risks?---Yes.

And one of those residual risks that was high, at least as at May 2018, is in relation to poor business practices and conduct?---Yes.

And if we bring up AMP.6000.0133.3737. We see this is the meeting papers for the concurrent meetings of the risk committees of AMP Limited, AMP Life and NMLA?---Yes.

And if we go to page .3754. You see at the bottom of the page there's risk number 11, which is:

Clients, products, business practices and conduct.

?---Yes.

And the nature of the risk is:

5 *Losses arising from poor business conduct.*

?---Yes.

And the explanation of the key driver of the risk is:

10

Poor, inappropriate or non-compliant advice (historical) in the advice continues to be the biggest driver of this risk. AMP has the highest ratio of banned advisers to current advisers in the industry (nine per cent, versus the next highest, five per cent, CBA).

15

?---Yes.

And this is a risk that has been residually high for several quarters?---Yes.

20

And do you have a view as to the extent to which – or what it means that AMP has had to accept that risk?---I think that we are talking here about the historic risks that are in place. And that risk is there for a – for a number of reasons, including some of the previous onboarding activities for advisers coming into the AMP network, as well as some of the practices that they have been following, and the ineffective risk processes and procedures that we've had in place to monitor the activities of those advisers.

25

30

Is one of the issues with having adequate processes and procedures in place to monitor the activities of advisers that it costs a lot?---That would be one of the considerations, but it shouldn't be an overriding consideration.

35

Is that, though, one of the reasons why investment in these processes and procedures has been deferred or not happened in the past, because of the cost involved?---I think there is some evidence of the fact that we have preferred short-term performance over making appropriate investments for the longer term. However, with the announcement that you referred to earlier in July of this year, we did indicate that over the course of the next two years we would be spending \$100 million to improve the risk governance processes and procedures. And, obviously, the advice business will be part of where that – that money is directed.

40

45

And the hope, I assume, is that by spending that money, you can be more confident that the quality of advice provided to customers will be good?---Yes. We have also enhanced the audit processes and some of the other processes within the advice business already. And I think we're starting to see some of the benefits of that coming through in terms of the – the fail rates for those advisers who have been subject more recently to the revised audit processes.

One of the other areas in which AMP has accepted - - -

THE COMMISSIONER: Just before you leave this area, Mr Hodge, do you have
any view, Mr Wilkins, about how the industry generally or the law generally should
5 deal with the problem of the so-called rolling bad apple, that is, the adviser who is
not sufficiently competent or engages in conduct of a kind that the advice licensee
condemns, moves from business to business?---Commissioner, I think that there
should be more protocols for that in place. AMP was an early adopter of the ABA
10 protocols around recognising that. And I think that that's an appropriate protocol.

10 Is it sufficient?---Yes.

I mean, I understand how you say it helps. Is it a sufficient step?---I think it is a
15 sufficient step, but there also needs to be better monitoring of the activities of those
advisers and a – a quicker consequence from organisations where those advisers are
not meeting the appropriate standards.

Do you have any view on whether individual licensing is simply a bureaucratic step
20 too far, or a useful step?---I think that it probably would be an overly bureaucratic
step to go with that. I think that the licensees do accept responsibility for their – for
those advisers who are – are aligned with their licence and it comes down to - - -

Well, the Act tells them they've got to. Yes?---Yes. Yes. But I think that – my
25 view, personal view, is, yes, it probably would be an overly bureaucratic step to
require individual licensing. And then it's a question of who would license them and
how the responsibilities would then sit around the activities of those individuals.

Yes.

30 MR HODGE: Why is that, though? Why is it overly bureaucratic? If financial
advisers are to be a profession, and in other professions you're licensed individually
by whatever the relevant regulatory body is?---Yes, but you are usually then not also
aligned and licensed with a – with a licensee. So I guess I'm talking here about a
35 self-enforcement program, as opposed to – to one that is driven by a – an individual
licence. Plus, I think that the industry is becoming more professional and that the
educational standards that – that are required will see an uplift in terms of the overall
professionalism here, as well.

40 I'm just trying to understand, though, AMP supports the professionalisation of
financial advisers?---Yes.

Why wouldn't financial advisers, if they're to be professionals, be like every other
professional? Why wouldn't they be like doctors and engineers and lawyers and
45 accountants, that is, they have an individual licensing and they have a regulatory
body that is responsible specifically for disciplining them?---There is no significant
difference in that. I think it's a question of – of whether the outcomes sought can be
achieved through a different means. And, in response to the Commissioner's

question, it was around individual licensing. As I said, my personal view is that's probably an overly bureaucratic step at this time.

5 Can we deal, then, with one of the other risks we were going to talk about. Sorry. I should tender that document, Commissioner.

THE COMMISSIONER: Risk committee meeting papers AMP Limited, AMP Life NMLA, 8 May '18, AMP.6000.0133.3737, exhibit 7.114.

10

EXHIBIT #7.114 RISK COMMITTEE MEETING PAPERS AMP LIMITED, AMP LIFE NMLA DATED 09/05/2018 (AMP.6000.0133.3737)

15 MR HODGE: Another risk I wanted to ask you about, Mr Wilkins, that is now coming home for AMP is in relation to the client servicing model for its workplace – for AMPs workplace super plans. That's not on the screen. We can take that down. Are you familiar with an issue around the client servicing model?---Broadly, but not specifically.

20

You're aware that, following FOFA, AMP introduced the client servicing model to maintain the service proposition for members who would no longer be paying servicing fees to advisers?---Yes.

25 And one of the things that AMP accepted was the residual risk of the client servicing model would contravene FOFA?---I saw that in a tender bundle that was – was submitted to me a couple of days ago, but that's the first time I was aware of it.

30 I will bring it up to make sure we're talking about the same thing. Can we bring up AMP.6000.0019.1499. So this is a pack for the AFS leadership team. And if we go to page .1583. This is a memorandum in relation to seeking formal approval from the Australian Financial Services Leadership Team to accept the residual risk that the client servicing model remuneration for corporate super may consider to be conflicted remuneration?---Yes.

35

And you're aware then, from the documents you've seen, that the AFSLT accepted that risk?---Yes.

And – I tender that document, Commissioner.

40

THE COMMISSIONER: AFS Leadership Team papers, 1 November '13, AMP.6000.0019.1499, exhibit 7.115.

45 **EXHIBIT #7.115 AFS LEADERSHIP TEAM PAPERS DATED 01/11/2013 (AMP.6000.0019.1499)**

MR HODGE: And are you aware, then, from the documents that you've looked at that the trustees – the superannuation trustees were told to note the new arrangements in a memorandum?---That's my recollection of the – well, they – they were asked to note the new arrangements, as opposed to told to.

5

Yes. They weren't – they weren't told, though, about the risk of conflicted remuneration?---I don't know the answer to that question.

10 All right. You're aware that AMP is currently conducting a detailed historical service review of the fees of the planned service fees charged for employer plans since 2008?---Yes.

15 And an initial and high level assessment has indicated that there are policy and control gaps in the management and monitoring of fees charged to workplace super members and for fees received by AMP advisers?---Yes.

20 And AMP has identified eight incidents as at 17 October 2018 with respect to charging of planned service fees and provision of services?---Yes. And those are being investigated at the moment.

And they've been breach reported to the regulator?---I'm not aware that they've – no. The regulator has been made aware of that, I beg your pardon.

25 And AMP is urgently sampling tests – I'm sorry – urgently sampling members to test whether services were provided?---Yes.

And currently conducting a workplace super compliance framework project?---Yes.

30 And that project is seeking to assess whether, for both the trustees and the AFSL holder's obligations, there are effective processes, controls and reporting in place for governance, outsourcing management, monitoring and supervision of workplace super fees and services?---Yes.

35 Is the risk that AMP faces in relation to this that it may have another fees for no service case on its hands?---Yes.

40 And do you have a view as to how it is that AMP has allowed itself and its trustees to be exposed to this risk?---I don't have a view. We are still going through the process of understanding this. The paper you're referring to was to bring the matter to the attention of the board, which we felt was appropriate in the circumstances.

PwC is conducting a review of AMPs corporate superannuation governance controls and processes – or it may have already done it?---I think it is conducting it.

45 And that report, though, is said by AMP to be subject to legal professional privilege. Is that right?---My understanding.

Now, AMP Limited owns AMP Bank?---Yes.

And AMP Bank is a medium ADI for the purposes of the Banking Act?---Yes.

5 And, therefore, the BEAR obligations will apply to it from 1 July 2019?---Yes.

And AMP had considered several – I think three – different models of accountability to apply to BEAR. And one of those models, the one that was ultimately adopted, is the hybrid model?---Yes.

10

And that model and the individuals identified in it as accountable persons were approved by the AMP Bank board on 2 May 2018?---Don't recall the date, but yes.

It has been approved?---Yes.

15

And the accountability model – I might just bring it up. If we bring up AMP.6000.0346.0495. We see this is a memorandum for the BEAR steering committee?---Yes.

20 Dated 16 March 2018?---Yes.

And if we go to page .05, you see what the steering committee was asked to approve is the hybrid accountability model?---Yes.

25 And the working group's view is that:

This model is a more flexible and pragmatic approach in meeting AMPs long-term strategic goals and shared services model, as it can be dialled up or down depending on regulatory and organisational changes.

30

?---Yes.

And it's explained that:

35 *Adopting a purely bank level option or group level option for accountable persons is less efficient, more disruptive to the current operating rhythm, and may not meet the longer-term strategy of AMP Group.*

?---Yes.

40

And it appears that the working group, and ultimately the steering committee, was accepting disruption – or the problem of disruption as a significant reason to go with hybrid accountability, rather than the other two models?---I think that that is mentioned here, but my understanding is that it was looking to make sure that it
45 recognised where people who should be accountable sat within the organisation, given the shared services model that AMP operates.

Well, all three models would have been in compliance with BEAR?---Yes.

5 And the particular issue that was identified in the memorandum for the steering committee was that it would be less efficient and more disruptive to go with one of the other two models, rather than the hybrid model?---Yes. It was felt, I think, that the hybrid model was a more appropriate model, given the structure and where services were provided from within the AMP Group.

10 Do you think, from your perspective, the implementation of BEAR might have been an opportunity for AMP to reassess the design of its organisation and accountability?---I think that AMP has chosen the operating model that it currently does, whereby some services are provided centrally, others are provided within specific business units. And what it has tried to do is to make sure that it has identified those accountable persons under the BEAR requirements regardless of
15 where they sit within the structure of – within the corporate structure of AMP.

20 What it sounds, though – what it sounds like, though, is that, rather than taking this as an opportunity to think about and restructure the organisation of AMP, that the BEAR model that has been adopted is one that's fitted to what is least likely to disrupt the existing organisation within AMP?---Well, I think the process would have looked at all of the alternatives, as this – as this paper shows. But it also has considered the structure that – that the organisation has chosen to follow, which has some services provided centrally, others provided within the individual business unit. And I think that's a – that's an appropriate decision for a business the size of AMP.

25 THE COMMISSIONER: Does it suggest that, in respect of an organisation like AMP that engages in a number of different financial services, that there would be advantage in having an accountability regime that was not restricted to banking?---Yes. And, in fact, with some of the requirements for the BEAR
30 accountabilities, and, more particularly, the remuneration parts of that, we've already made the decision that we will extend that, particularly the deferral timeframes, across all of the organisation, rather than just to the bank.

35 And, apart from the remuneration consequences which have their particularly important part to play in BEAR, just accountability mapping and accountability statements, are those steps that would have value in AMP in its activities beyond banking, say, into its superannuation activities, say, well, depending – there's now not much left of the insurance activities, is there? But into the super
40 activities?---Yes, there would be benefit from that. And I think some of the overseas models where similar arrangements have been put in place apply to – to broader areas of conglomerates.

Yes.

45 MR HODGE: If you think, though, about the organisational design governance model and risk management controls for AMP, this has been a problem for AMP, hasn't it, for several years?---I'm sorry. Could you repeat the question.

I'm sorry. The organisational design governance model and risk management controls are things that have been problematic for AMP for a few years?---Well, certainly the risk management controls and governance. There has been issues with that. And, as I mentioned earlier, I think part of that has been that there has been an underspend over the past several years on those processes and procedures.

EY performed the most recent triennial review of the AMP group in accordance with SP 220?---That's my understanding.

And that was done in 2015, before you joined the company?---Yes.

And another one hasn't occurred yet?---No.

And EY delivered its report – or delivered a report dated 2 March 2016?---That is my understanding.

You've looked at that report?---Yes.

And EY benchmarked AMP Group, AMP Life and AMP Bank against its peers?---Yes.

And all three benchmarked as low compared to their peers?---On some sectors. In some areas they were equivalent to their peers, I think.

In respect of the group, EY found that, as an Australian conglomerate, AMP is trailing behind its peers in the benchmarked attributes utilised?---Yes.

And EY said that:

Work was needed across the AMP Group to lift the capability and quality of the risk management framework to align with industry peers, reasonable practice for risks under management, and developments in conglomerate risk management.

?---Yes.

And EY made a number of recommendations to improve or repair the enterprise risk management framework?---Yes.

And AMP had been working to implement those arrangements since 2016?---Yes.

APRA made the observation in April 2015 that:

Whilst APRA notes the ongoing work to enhance the maturity and effectiveness of the enterprise risk management framework, it is our view that overall the framework is not at a level appropriate to the size, complexity and business mix of the group.

?---Yes.

And an internal report – internal audit report prepared in February of this year noted that:

5

Management acknowledged that further action is required across the six enterprise risk management framework components to create a risk management framework that is commensurate to the size and complexity of AMP.

10

?---Yes.

And so, again, to return to my question about the implementation of BEAR, why implement BEAR in a way that preserves the processes, systems and controls that AMP has in place or doesn't disrupt them?---I think that BEAR needs to be implemented in a way that also works for the organisation. AMP is on a journey in terms of what it is looking to do with its risk processes and controls. And, as I mentioned earlier, we are making a considerable investment in enhancing that, that there will be benefit to the bank from that, as there will to the rest of the AMP Group.

20

Under the hybrid model, the CEO is not – the CEO of AMP Group is not an accountable person?---Yes.

If you had adopted the group model, would the CEO have been an accountable person?---I can't recall the – what that was shown in the paper, but, in theory, yes.

25

I can bring it up, if it helps. Can we – Commissioner, I tender that document. I'm sorry. We should go to page .0501. So you see this is the group level accountability model?---Yes.

30

And so, under the group level model, you can see the then group CEO would have been an accountable person?---Yes.

And, again, I wonder why not take the step, if you think BEAR is a good idea and the extension of BEAR is a good idea, to adopt that group level accountability model for AMP?---Can't comment on the – on the specific decision. Obviously, before my time there. However, we will certainly comply with – with the – with whatever legislation is put in place. And the Commissioner has raised a good question around whether it should apply to conglomerate entities.

40

Is that a convenient time – sorry. I tender that - - -

THE COMMISSIONER: Yes. You want to tender this document?

45

MR HODGE: I tender that, Commissioner.

THE COMMISSIONER: The memorandum BEAR steering committee, 16 March '18, AMP.6000.0346.0495, exhibit 7.116.

5 **EXHIBIT #7.116 MEMORANDUM BEAR STEERING COMMITTEE
DATED 16/03/2018 (AMP.6000.0346.0495)**

10 MR HODGE: Commissioner, just before we rise, can I just clarify one thing, which is I think I asked a question earlier where I referred Mr Wilkins to a breach notification having been given on 17 October 2018 when it should have been 2016. I think you gave me a quizzical look - - -?---Yes.

15 - - - at that point, which I think was because - - -?---That's why I said - - -
- - - you picked it up?---I said I wasn't aware of one going at that stage.

Yes. Thank you.

20 THE COMMISSIONER: Now, timing, Mr Hodge. What – (1) what time tomorrow? And (2) that's affected by how much longer you expect to require with Mr Wilkins, do you think?

25 MR HODGE: Commissioner, I would be content to start at 10. I think I will have cut this down to be finished with Mr Wilkins within half an hour tomorrow morning, but we can start at 9.45, if you would prefer.

THE COMMISSIONER: I think 10 am.

30 MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Yes. Can you be back in time to begin at 10 am, please, Mr Wilkins?---Yes, Commissioner.

35 Yes. 10 am.

<THE WITNESS WITHDREW

[4.16 pm]

40

**MATTER ADJOURNED at 4.16 pm UNTIL
WEDNESDAY, 28 NOVEMBER 2018**

Index of Witness Events

KENNETH ROSS HENRY, ON FORMER AFFIRMATION	P-7121
CROSS-EXAMINATION BY MS ORR	P-7121
RE-EXAMINATION BY MS HARRIS	P-7184
THE WITNESS WITHDREW	P-7186
MICHAEL JOHN WILKINS, SWORN	P-7187
EXAMINATION-IN-CHIEF BY MR HOLLO	P-7187
CROSS-EXAMINATION BY MR HODGE	P-7188
THE WITNESS WITHDREW	P-7228

Index of Exhibits and MFIs

EXHIBIT #7.88 MEMORANDUM TO THE BOARD ENTITLED CULTURE DATED 05/11/2018 (NAB.007.049.0092)	P-7121
EXHIBIT #7.89 MEMORANDUM FOR NAB PRINCIPAL BOARD RISK COMMITTEE DATED 27/04/2015 (NAB.094.001.6778)	P-7125
EXHIBIT #7.90 MEMORANDUM FOR PRINCIPAL BOARD RISK COMMITTEE AND REMUNERATION COMMITTEE, DECEMBER 2015 (NAB.030.003.3940)	P-7126
EXHIBIT #7.91 BOARD MEMORANDUM CONCERNING SUMMARY OF MATERIAL REGULATORY ENGAGEMENT, AUGUST 2015 (NAB.030.002.1079)	P-7128
EXHIBIT #7.92 MINUTES OF NAB BOARD MEETING DATED 05/08/2015 (NAB.092.001.0653)	P-7129
EXHIBIT #7.93 REPORT OF GROUP CHIEF RISK OFFICER DATED 05/08/2015 (NAB.030.002.1732)	P-7135
EXHIBIT #7.94 MINUTES OF THE RISK COMMITTEE MEETING DATED 05/08/2015 (NAB.092.001.1247)	P-7140
EXHIBIT #7.95 LETTER FROM APRA TO HENRY, APRA PRUDENTIAL REVIEW, RISK GOVERNANCE DATED 28/04/2016 (NAB.007.002.0008)	P-7142
EXHIBIT #7.96 LETTER APRA TO HENRY CONCERNING APRA PRUDENTIAL REVIEW COMPLIANCE AND REMUNERATION (NAB.007.002.0016)	P-7146
EXHIBIT #7.97 AGENDA (NAB.005.868.2311)	P-7150

EXHIBIT #7.98 FY16 RISK MANAGEMENT PERFORMANCE REPORT (NAB.005.868.2406)	P-7150
EXHIBIT #7.99 FY16 BUSINESS OUTCOMES FOR SHORT-TERM INCENTIVES PAPER (NAB.005.868.2414)	P-7150
EXHIBIT #7.100 JOINT MEETING OF THE REMUNERATION AND RISK COMMITTEE DATED 05/10/2016 (NAB.092.001.1657)	P-7155
EXHIBIT #7.101 MEETING OF BOARD DELEGATES AND ATTACHED EMAIL DATED 14/10/2016	P-7159
EXHIBIT #7.102 MINUTES OF NAB BOARD MEETING DATED 31/05/2018 (NAB.006.041.0138)	P-7166
EXHIBIT #7.103 AGENDA OF REMUNERATION AND RISK COMMITTEE MEETING DATED 02/10/2018 (NAB.006.094.0001)	P-7166
EXHIBIT #7.104 PAPER DEALING WITH RISK MANAGEMENT PERFORMANCE FOR FY18 (NAB.006.094.0015)	P-7170
EXHIBIT #7.105 MEMORANDUM FY18 GROUP BONUS POOL (NAB.006.094.0041)	P-7171
EXHIBIT #7.106 MINUTES OF NAB BOARD DATED 02/10/2018 (NAB.007.074.0001)	P-7173
EXHIBIT #7.107 APRA NOTE FOR FILE (APRA.0800.0001.0001)	P-7185
EXHIBIT #7.108 FIRST STATEMENT OF LYNDA DEAN DATED 02/11/2018	P-7186
EXHIBIT #7.109 SECOND STATEMENT OF LYNDA DEAN DATED 16/11/2018	P-7186
EXHIBIT #7.110 WITNESS STATEMENT OF FIONA WARDLAW AND ITS EXHIBITS DATED 02/11/2018 (AMP.6000.0345.0011)	P-7187
EXHIBIT #7.111 SUMMONS TO MR WILKINS	P-7187
EXHIBIT #7.112 STATEMENT AND EXHIBITS OF MR WILKINS DATED 21/11/2018 (AMP.6000.0384.0001)	P-7188
EXHIBIT #7.113 MINUTES OF THE BOARD OF AMP LIMITED, AMP LIFE AND NMLA DATED 25/10/2018 (AMP.6000.0343.0001)	P-7219

EXHIBIT #7.114 RISK COMMITTEE MEETING PAPERS AMP
LIMITED, AMP LIFE NMLA DATED 09/05/2018
(AMP.6000.0133.3737)

P-7222

EXHIBIT #7.115 AFS LEADERSHIP TEAM PAPERS DATED
01/11/2013 (AMP.6000.0019.1499)

P-7222

EXHIBIT #7.116 MEMORANDUM BEAR STEERING
COMMITTEE DATED 16/03/2018 (AMP.6000.0346.0495)

P-7228