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Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID489/2020
File Title:	NIGEL PETER STACK & ORS v AMP FINANCIAL PLANNING PTY LIMITED & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 24/12/2021 1:29:04 PM AEDT

A handwritten signature in blue ink, reading "Sia Lagos".

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Amended Consolidated Statement of Claim

(Filed pursuant to leave granted in order 2(a) 4- of the orders made by Beach J on
26 February- 23 December 2021)

No. VID 489 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

Nigel Peter Stack and others named in the Schedule
Applicants

AMP Financial Planning Limited (ACN 051 208 327) and others named in the Schedule
Respondents

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A NATURE OF THE PROCEEDINGS

1. The First, Second, Third and Fourth Applicants bring this proceeding, pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth), on their own behalf and on behalf of other persons who:

~~1.1~~ ~~acquired, renewed or continued to hold Commissioned Products (as that term is defined in paragraph 37 below) in respect of which Commissions (as that term is defined in paragraph 41 below) were paid from 23 July 2014;~~

1.2 received personal advice from an AMP Authorised Representative (as that term is defined in paragraph 6 below) to acquire, renew or continue to hold (by themselves or through their superannuation funds as members) Commissioned Products (as that term is defined in paragraph 37 below);

1.2A pursuant to that advice, acquired, renewed or continued to hold (by themselves or through their superannuation funds as members) Commissioned Products in respect of which Commissions (as that term is defined in paragraph 41 below) were paid from 23 July 2014;

1.2B by reason thereof (by themselves or through their superannuation funds as members);

(a) -suffered loss or damage; or

(b) claim an account of profits;:-

~~4.21.3~~ are not a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; and

~~4.31.4~~ are not an AMP Authorised Representative,

(Group Members).

2. As at the date of commencement, there are seven or more Group Members.
3. In this Amended ~~Consolidated~~ Statement of Claim:
 - 3.1 **'Stack Sub-Group Members'** are those Group Members who on or after 23 July 2014:

- ~~(a) acquired, renewed or continued to hold an AMP Life Product; and~~
- (b) received personal advice from an AMP Authorised Representative (as defined in paragraph 6 below) to acquire, renew or continue to hold (by themselves or through their superannuation funds as members) and AMP Life Product (as that term is defined in paragraph 39 below);
- (c) pursuant to that advice, acquired, renewed or continued to hold (by themselves or through their superannuation funds as members) an AMP Life Product; and;
- (d) by reason thereof and in paying what are claimed to be any Excess Premiums (as that term is defined in paragraph 67 below) on such AMP Life Products (by themselves or through their superannuation funds as members);
- (i) suffered loss or damage; or
- (ii) claim an account of profits.

3.33.2 **'OSF Sub-Group Members'** are those Group Members who on or after 23 July 2014:

- (a) paid OSFs (as defined in paragraph 73 below) to one or more AMP Authorised Representatives; and
- (b) did not receive (in whole or in part) the AMP Ongoing Service Package (as defined in paragraph 71 below) from the AMP Authorised Representative.

4. In this ~~Consolidated~~ Amended Statement of Claim, the period from 23 July 2014 until 15 February 2021 inclusive is referred to as the **'Relevant Period'**.

B THE RESPONDENTS

5. Each of the First Respondent (**AMPFP**), Second Respondent (**Charter**) and Third Respondent (**Hillross** and, together with AMPFP and Charter, the **AMP Licensees**):

5.1 is a company incorporated pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**) and is capable of being sued;

- 5.2 at all material times held, and continues to hold, an Australian Financial Services License (**AFSL**) granted pursuant to s 913B of the Corporations Act;

Particulars

- i. AMPFP: AFSL No. 232706.*
- ii. Charter: AFSL No. 234 655.*
- iii. Hillross: AFSL No. 232705.*

- 5.3 is and at all material times was part of the AMP Group of Companies (the **AMP Group**);

- 5.4 at all material times, carried on the business of providing financial services to clients, including:

- (a) providing financial product advice within the meaning of s 766B(1) of the Corporations Act;
- (b) providing personal advice within the meaning of s 766B(3) of the Corporations Act; and
- (c) dealing in financial products within the meaning of s 766C(2) of the Corporations Act.

6. At all material times:

- 6.1 AMPFP had a network of authorised representatives who provided financial services on behalf of AMPFP (**AMPFP Authorised Representatives**);
- 6.2 Charter had a network of authorised representatives who provided financial services on behalf of Charter (**Charter Authorised Representatives**); and
- 6.3 Hillross had a network of authorised representatives who provided financial services on behalf of Hillross (**Hillross Authorised Representatives** and, together with the AMPFP Authorised Representatives and the Charter Authorised Representatives, the **AMP Authorised Representatives**).

Particulars

- i. AMP Authorised Representatives were and are either self-employed and operating as sole-traders, corporate entities or trusts, or employed by other authorised representatives operating as corporate entities.*

- ii. *As at 30 June 2018, AMPFP had a network of 1,334 AMPFP Authorised Representatives.*
- iii. *As at 30 June 2018, Charter had a network of 687 Charter Authorised Representatives.*
- iv. *As at 30 June 2019, Hillross had a network of 313 Hillross Authorised Representatives.*

6A. At all material times, the AMP Authorised Representatives were and are:

6A.1 self-employed and operating as a sole-trader;

6A.2 a corporate entity, partnership or trust (**Practice**); or

6A.3 employed or engaged by, or otherwise operating through, a Practice.

7. At all material times, each of the AMP Authorised Representatives was:

7.1 authorised by written notice to provide financial product advice on behalf of AMPFP, Charter or Hillross in accordance with ss 916A(1) and/or 916B(3) of the Corporations Act;

Particulars

- i. *AMPFP typically entered into contractual arrangements with the AMPFP Authorised Representatives comprising an 'Authorised Representative Deed of Agreement – Sole Trader Practice', 'Authorised Representative Deed of Agreement – Corporate Practice' and a 'Master Terms' document, which set out, inter alia, the authorisation given by AMPFP to the AMPFP Authorised Representative to provide specified financial services on behalf of AMPFP and the obligations on the AMPFP Authorised Representative.*
- ii. *Charter typically entered into a contractual arrangement with the Charter Authorised Representatives comprising a 'Representative Services Agreement – Individual', 'Appointment Agreement – Corporate and Representative Services Agreement – Corporate Authorised Representative', which set out the authorisation given by Charter to the Charter Authorised Representative to provide specified financial services on behalf of Charter and the obligations on the Charter Authorised Representative.*

iii. *Hillross typically entered into a contractual arrangement with the Hillross Authorised Representatives comprising an Authorised Representative Deed of Agreement – Sole Trader Advisory Firm’, ‘Authorised Representative Deed of Agreement – Corporate Advisory Firm’ and a ‘Master Terms’ document, which set out the authorisation given by Hillross to the Hillross Authorised Representative to provide specified financial services on behalf of Hillross and the obligations on the Hillross Authorised Representative.*

- 7.2 an authorised representative of AMPFP, Charter or Hillross within the meaning of s 761A of the Corporations Act; and
- 7.3 an agent for and on behalf of AMPFP, Charter or Hillross in providing financial and/or personal advice to members of the public about policies of insurance and other financial products.

Particulars

The particulars to paragraph 7.1 above are repeated.

8. The Fourth Respondent (**AMP**):

- 8.1 is a company incorporated pursuant to the Corporations Act and is capable of being sued;
- 8.2 is and at all material times was the parent of the AMP Group;
- 8.3 is and at all material times was the ultimate holding company of AMPFP, Charter and Hillross; and
- 8.4 is and at all material times was a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

9. The Fifth Respondent (formerly AMP Life, now Resolution Life Australasia Limited, **AMP Life**):

- 9.1 is a company incorporated pursuant to the Corporations Act and is capable of being sued;
- 9.2 is and at all material times was the holder of an AFSL granted pursuant to s 913B of the Corporations Act;

Particulars

AFSL No. 233671.

- 9.3 at all material times until 30 June 2020, was an associate of each of the AMP Licensees within the meaning of s 11(b) of the Corporations Act;
- 9.4 is and at all material times was registered under s 21 of the *Life Insurance Act 1995* (Cth) (**Life Insurance Act**) to issue life policies within the meaning of the Corporations Act; and
- 9.5 at all material times carried on a life insurance business within the meaning of the Life Insurance Act.

C THE APPLICANTS

C.1 The First Applicant

- 10. On or around 13 July 2012, the First Applicant received personal advice from Noel Lang, an AMPFP Authorised Representative, to acquire an insurance product called 'AMP Flexible Super – Flexible Protection'.

Particulars

The advice was contained in a Statement of Advice prepared by N Lang of U-First Financial Solutions Pty Ltd, an AMPFP Authorised Representative, for the First Applicant dated 13 July 2012.

- 11. Pursuant to that advice, on or around 25 July 2012, the First Applicant acquired the 'AMP Flexible Super – Flexible Protection' product.

Particulars

- i. *The First Applicant obtained Death and TPD cover (at an initial level of cover of \$500,000 indexed to CPI) and TSC cover (at a level of cover of \$2,000) within his AMP Flexible Super – Super account number 951174335.*
- ii. *Letter from G Baker, Director of Customer Service Delivery at AMP, to the First Applicant dated 7 July 2012.*
- iii. *Letter from G Baker, Director of Customer Service Delivery at AMP, to the First Applicant dated 8 July 2012.*

- 12. The 'AMP Flexible Super – Flexible Protection' product acquired by the First Applicant is and at all material times was:

- 12.1 a financial product within the meaning of s 763A(1) of the Corporations Act;
 - 12.2 a Commissioned Product (as defined in paragraph 37 below); and
 - 12.3 an AMP Life Product (as defined in paragraph 39 below).
13. On or around 18 December 2015, the First Applicant received personal advice from Mr Lang which included a recommendation that the First Applicant renew and continue to hold the 'AMP Flexible Super – Flexible Protection' product.

Particulars

The advice was contained in a Statement of Advice dated 18 December 2015 for the First Applicant prepared by N Lang of U-First Financial Solutions Pty Ltd, an AMPFP Authorised Representative.

14. Pursuant to that advice, the First Applicant renewed and continued to hold the 'AMP Flexible Super – Flexible Protection' product until 3 January 2019.

Particulars

- i. Mr Stack retained Death and TPD cover (at a level of cover reduced from \$578,812 to \$400,000) and TSC cover within his AMP Flexible Super – Super account number 951174335.*
- ii. Letter from M Weir, Director of Insurance Operations, AMP Life to Mr Stack dated 24 December 2015.*
- iii. Statements for AMP Flexible Super - Super account number 951174335 dated 5 August 2016, 4 August 2017, 17 August 2018 and 3 January 2019.*

15. During the Relevant Period, Commissions (as defined in paragraph 41 below) were paid in respect of the 'AMP Flexible Super – Flexible Protection' product.

Particulars

- i. On acquisition of the 'AMP Flexible Super – Flexible Protection' product 130% of the premium or \$4,525.18 was paid as Commissions.*
- ii. Each year thereafter, 11.00% of the premium was paid as Commissions or: FY13: \$323.69; FY14: \$460.33; FY15: \$555.28; FY16: \$591.88; FY17: \$625.96; FY18: \$768.18; FY19: \$544.35.*

16. During the Relevant Period, the First Applicant paid premiums on the 'AMP Flexible Super – Flexible Protection' product.

Particulars

- i. Premiums charged by AMP Life to the First Applicant on and from December 2015 were as follows:*
 - a. From 1 December 2015 to 30 June 2016: \$153.73 per month (Death); \$233.10 per month (TPD); and \$193.02 per month (TSC).*
 - b. From 1 July 2016 to 30 June 2017: \$183.13 per month (Death); \$190.08 per month (TPD); and \$203.93 per month (TSC).*
 - c. From 1 July 2017 to 30 June 2018: \$221.46 per month (Death); \$360.50 per month (TPD) and \$215.22 per month (TSC).*
 - d. From 1 July 2018 to 31 December 2019: \$262.83 per month (Death); \$444.12 per month (TPD); and \$259.18 per month (TSC).*
- ii. The premiums were paid from the First Applicant's superannuation account.*
- iii. Particular (iii) to paragraph 14 is repeated.*

C.2 The Second Applicant

17. On or around 15 September 2012, the Second Applicant acquired a product called 'Flexible Lifetime – Protection Plan'.

Particulars

Plan No. VT5200902V.

18. The 'Flexible Lifetime – Protection Plan' product acquired by the Second Applicant was and is:
- 18.1 a financial product within the meaning of s 763A(1) of the Corporations Act;
 - 18.2 a Commissioned Product (as defined in paragraph 37 below).
19. On or around 29 July 2014, the Second Applicant received personal advice from Jason Spears, an AMPFP Authorised Representative, to acquire an 'AMP Flexible Super – Flexible Protection' product.

Particulars

The advice was contained in a Statement of Advice dated 29 July 2014 prepared for the Second Applicant by J Spears of Bayside Financial Planners, an AMPFP Authorised Representative.

20. Pursuant to that advice, on or around 27 August 2014, the Second Applicant, acquired the 'AMP Flexible Super – Flexible Protection' product and continued to hold that product until around 7 November 2019.

Particulars

- i. The Second Applicant transferred her insurance cover from the 'Flexible Lifetime – Protection Plan' product to the 'AMP Flexible Super – Flexible Protection' product.*
- ii. The Second Applicant obtained Death cover (at an initial level of cover of \$380,367 indexed to CPI) within her AMP Flexible Super – Super account number 958100255.*
- iii. Letter from G Baker, Director of Customer Service Delivery at AMP, to the Second Applicant dated 3 September 2014.*
- iv. Statements for AMP Flexible Super - Super account number 958100255; AMF.3100.0002.0037; AMF.3100.0002.0043; AMF.3100.0002.0049.*

21. The 'AMP Flexible Super – Flexible Protection' product acquired by the Second Applicant was and is:

21.1 a financial product within the meaning of s 763A(1) of the Corporations Act;

21.2 a Commissioned Product (as defined in paragraph 37 below); and

21.3 an AMP Life Product (as defined in paragraph 39 below).

22. During the Relevant Period, Commissions were paid in respect of:

22.1 the 'Flexible Lifetime Protection Plan' product;

Particulars

- i. An upfront Commission of \$543.70 was paid in respect of the 'Flexible Lifetime Protection Plan' product on or around 27 August 2014.*

- ii. *Further particulars of the Commissions paid in respect of the AMP Flexible Super – Flexible Protection’ product will be provided following receipt of Respondents’ discovery.*

22.2 the ‘AMP Flexible Super – Flexible Protection’ product.

Particulars

- i. *An upfront Commission of \$219.30 was paid in respect of the ‘AMP Flexible Super – Flexible Protection’ product on or around 27 August 2014.*
- ii. *A trailing Commission of 12.5% of the premium was paid thereafter in respect of the ‘AMP Flexible Super – Flexible Protection’ product.*
- iii. *Further particulars of the Commissions paid will be provided following receipt of Respondents’ discovery.*

C.3 The Third Applicant

- 23. On or around 5 March 2009, the Third Applicant acquired the ‘North Personal Pension’ product.
- 24. The North Personal Pension product acquired by the Third Applicant was and is:
 - 24.1 a financial product within the meaning of s 763A(1) of the Corporations Act; and
 - 24.2 a Commissioned Product (as defined in paragraph 37 below).
- 25. On or around 28 August 2014, the Third Applicant received personal advice from Kevin Blackshaw, a Charter Authorised Representative, to continue to hold the product called ‘North Personal Pension.’

Particulars

The advice was contained in a conversations had between K Blackshaw, a Charter Authorised Representative, and the Third Applicant as recorded in AMF.3100.0005.0008

- 26. Pursuant to that advice, the Third Applicant continued to hold the ‘North Personal Pension’ product until around 23 August 2018.
- 27. On or around 11 September 2018, the Third Applicant received personal advice from Mr Blackshaw to acquire a product called ‘My North Pension – Protected Growth Guarantee’.

Particulars

The advice was contained in Statement of Advice prepared by K Blackshaw, a Charter Authorised Representative, for the Third Applicant dated 11 September 2018.

28. Pursuant to that advice, on or around 13 September 2018, the Third Applicant acquired the 'MyNorth Pension – Protected Growth Guarantee' product.
29. The 'My North Pension – Protected Growth Guarantee' product acquired by the Third Applicant was and is:
 - 29.1 a financial product within the meaning of s 763A(1) of the Corporations Act; and
 - 29.2 a Commissioned Product (as defined in paragraph 37 below).
30. The Third Applicant renewed and continued to hold the 'My North Pension – Protected Growth Guarantee' product until the end of the Relevant Period.
31. During the Relevant Period, Commissions (as defined in paragraph 41 below) were paid in respect of the 'North Personal Pension' and the 'My North Pension – Protected Growth Guarantee' products.

Particulars

Particulars of the Commissions paid in respect of the Third Applicants' Commissioned Products will be provided following receipt of the Respondents' discovery.

C.4 The Fourth Applicant

32. On or around 14 March 2001, the Fourth Applicant received personal advice from Michael Foster, a Hillross Authorised Representative, to acquire a product called 'Portfolio Care Investment Service'.

Particulars

The advice was contained in a Financial Plan dated 14 March 2001 prepared for the Fourth Applicant by M Foster, a Hillross Authorised Representative.

33. Pursuant to that advice, on or around 6 April 2001, the Fourth Applicant acquired the 'Portfolio Care Investment Service' product.
34. The 'Portfolio Care Investment Service' acquired by the Fourth Applicant was and is:
 - 34.1 a financial product within the meaning of s 763A(1) of the Corporations Act; and

34.2 a Commissioned Product (as defined in paragraph 37 below).

35. The Fourth Applicant renewed or continued to hold the 'Portfolio Care Investment Service' product until around 16 October 2018.
36. During the Relevant Period, Commissions (as defined in paragraph 41 below) were paid in respect of the 'Portfolio Care Investment Service' product.

Particulars

- i. An upfront Commission of 2.2% or \$2,200 was paid on the acquisition of the 'Portfolio Care Investment Service' product.*
- ii. A trailing Commission of 0.55% or around \$550 was paid on an ongoing basis during the Relevant Period.*

D THE RELEVANT PRODUCTS

D.1 Commissioned Products

37. At all material times, financial product issuers issued financial products within the meaning of s 763A(1) of the Corporations Act in respect of which commissions were payable (**Commissioned Products**), including insurance and financial products other than insurance products.
38. At all material times, the financial product issuers that issued Commissioned Products included:
- 38.1 AMP Life;
 - 38.2 other entities within the AMP Group; and
 - 38.3 third-party financial product issuers.

D.2 AMP Life Products

39. At all material times, AMP Life issued the following Commissioned Products, being life and risk insurance products:
- 39.1 Flexible Lifetime – Protection;
 - 39.2 Flexible Lifetime – Super;
 - 39.3 AMP Flexible Super – Flexible Protection; and

39.4 AMP Flexible Super – Super Protection,
(the **AMP Life Products**).

Particulars

- i. *'AMP Flexible Lifetime – Protection Product Disclosure Statement' issued on 19 August 2012, 'AMP Flexible Super – Product Disclosure Statement' issued 1 July 2013, 'AMP Flexible Lifetime – Protection Product Disclosure Statement', issued 19 May 2014, 'AMP Flexible Super – Product Disclosure Statement' issued 30 September 2018 and 'AMP Flexible Lifetime – Super – Insurance Fact Sheet' issued 30 September 2018.*
- ii. *Further particulars may be provided following receipt of the Respondents' discovery.*

40. The AMP Life Products provided benefits in respect of one or more of the following:

- 40.1 death;
- 40.2 total and permanent disablement (**TPD**);
- 40.3 trauma;
- 40.4 loss of income, also referred to as temporary salary continuance (**TSC**); and
- 40.5 business overheads.

E COMMISSIONS AND OTHER INCENTIVES

E.1 Commissions

41. At all material times, financial product issuers had agreements or arrangements (**Distribution Agreements**) with each of the AMP Licensees for the sale and distribution of Commissioned Products pursuant to which the financial product issuers agreed to pay the AMP Licensees commissions (**Commissions**) in relation to those products.

Particulars

Particulars of the Distribution Agreements will be provided following receipt of the Respondents' discovery.

42. At all material times, AMP Life had Distribution Agreements in place with each of the AMP Licensees (**AMP Life Distribution Agreements**) for the sale and distribution of its AMP

Life Products pursuant to which AMP Life agreed to pay Commissions to the AMP Licensees in relation to the AMP Life Products (**AMP Life Commissions**).

Particulars

*Witness statement of Mr Gregory Johnson to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**) dated 10 September 2018 (**Johnson Statement**), at [27].*

43. At all material times, the Commissions on insurance products (including the AMP Life Commissions):

43.1 were payable on a per product basis and calculated by reference to the premium payable on the Commissioned Product; and

43.2 included upfront and trailing commissions.

Particulars

i. Commissions varied between products, and included level, hybrid and upfront options, comprising different upfront and trailing commissions.

ii. As to the AMP Life Commissions, 'AMP Flexible Super enhancements', effective March 2014; and 'AMP Lifetime – Protection: Insurance commission information', versions dated 1 July 2015, 23 November 2015, 4 October 2016 and 12 June 2017.

iii. AMP Life standardised commission tables as referred to in the Johnson Statement at [32].

iv. Further particulars may be provided following receipt of the Respondents' discovery.

44. At all material times, the Commissions on products other than insurance products:

44.1 were payable on a per product basis and calculated by reference to the declared unit price of the investment in the Commissioned Product; and

44.2 included upfront and trailing commissions.

Particulars

i. The Statement of Advice prepared for the Third Applicant dated 11 September 2018 and the Commissions described therein.

- ii. *The Limited Advice Financial Plan prepared for the Fourth Applicant dated 14 March 2001 and the Commissions described therein.*
- iii. *Particulars in respect of the Commissions paid and payable by Group Members will be provided following the initial trial.*
- iv. *Further particulars may be provided following receipt of the Respondents' discovery.*

45. At all material times, pursuant to agreements between the AMP Licensees and their respective AMP Authorised Representatives (or their Practices), the AMP Authorised Representatives (or their Practices) were entitled to be paid the Commissions (or part of them) received by the AMP Licensees in relation to Commissioned Products acquired, renewed or held by a client of the AMP Authorised Representative, including the AMP Life Commissions received by the AMP Licensees in relation to AMP Life Products.

Particulars

- i. *Johnson Statement at [28] and [29].*
- ii. *Further particulars may be provided following receipt of the Respondents' discovery.*

46. Further to paragraph 45 above, an AMP Authorised Representative's (or their Practice's) entitlement to be paid Commissions in relation to a Commissioned Product could be acquired by the AMP Licensee in accordance with the Buy-Back Option (as that term is defined at paragraph 52 below) and/or transferred to another AMP Authorised Representative (or Practice) (**Second AMP Authorised Representative**), such that the Second AMP Authorised Representative would be entitled to be paid any future Commissions in relation to that Commissioned Product.

Particulars

*Witness statement of Mr A G Regan to the Banking Royal Commission dated 11 April 2018 (**Regan Statement**), at [146]-[148].*

47. The matters set out at paragraphs 45 and 46 above could reasonably be expected to influence the personal advice given to clients by the AMP Authorised Representatives with respect to Commissioned Products, including any recommendation to acquire, renew, or continue to hold one or more AMP Life Products.

Particulars

- i. *It was in the interests of the AMP Authorised Representatives for them and/or their Practices*

to receive the Commissions and to maximise the amount of Commissions ~~they~~ received.

- ii. The particulars in paragraphs 43 and 44 above and 60 below are repeated.*
- iii. With respect to Commissions payable on insurance products, the Commissions could reasonably be expected to influence the advice given to clients by AMP Authorised Representatives when:*
 - a. recommending insurance products as a class of financial products;*
 - b. recommending the level of insurance cover taken through an insurance product;*
 - c. recommending the renewal or retention of an insurance product including after the client no longer had a need for the cover or the level of cover;*
 - d. recommending change or turnover of insurance products; and*
 - e. reviewing or not reviewing the appropriateness of the client's level of insurance cover.*
- iv. With respect to Commissions payable on financial products, the Commissions could reasonably be expected to influence the advice given to clients by AMP Authorised Representatives when:*
 - a. recommending the relevant class of financial product;*
 - b. recommending the size of the investment;*
 - c. recommending the retention of a financial product even after the product was no longer appropriate for the client's investment objectives; and*
 - d. recommending change or turnover of financial products.*
- v. Further to (iii) above, the AMP Life Commissions payable on AMP Life Products could reasonably be expected to influence the advice given by an AMP Authorised Representatives that a client obtain, renew or continue to hold an AMP Life Product rather than another life or risk insurance product by reason that the AMP Life*

Commissions were and are calculated by reference to the premium payable on the AMP Life Product (as alleged in paragraph 43 above) and that the premiums payable on AMP Life Products included the Excess Premiums (as defined in paragraph 67 below).

vi. Further particulars may be provided following receipt of the Respondents' discovery.

47A. During the Relevant Period, as pleaded in paragraphs 41 to 47 above, the AMP Licensees had in place systems or processes for remunerating their respective AMP Authorised Representatives, with the following features::

47A.1 receiving Commissions from various providers of policies of insurance and other financial products (including from AMP Life) in relation to Commissioned Products acquired, renewed or held by the clients of an AMP Authorised Representative;

47A.2 paying Commissions to the AMP Authorised Representatives (or their Practices), after deducting licensee fees and other amounts pursuant to the terms of the agreements between AMP Authorised Representatives (or their Practices) and AMP Licensees;

47A.3 where an AMP Authorised Representative was employed or engaged by, or otherwise operated through, a Practice, not monitoring or supervising the manner in which the Practice paid Commissions to AMP Authorised Representatives; and

47A.4 not requiring the AMP Authorised Representatives (or their Practices) to provide any additional benefit or service to clients in consideration for the payment of the Commissions.

Particulars

The particulars to paragraph 42 and 45 are repeated.

E.3E.2 Other incentive payments

48. At all material times, pursuant to the Distribution Agreements, some or all of the financial product issuers agreed to provide to the AMP Licensees, or to the AMP Authorised Representatives (or their Practices) directly, monetary benefits (**Incentives**) separate from

and in addition to the Commissions in relation to the volume of and growth in sales of Commissioned Products.

Particulars

Johnson Statement, at [33], [37]; and Tab 6 of Exh GRJ-1 to the Johnson Statement.

49. At all material times, pursuant to the AMP Life Distribution Agreements, AMP Life agreed to provide to the AMP Licensees, or directly to the AMP Authorised Representatives (or their Practices), Incentives (**AMP Life Incentives**) separate from and in addition to the AMP Life Commissions in relation to the volume of and growth in sales of AMP Life Products.

Particulars

- i. Johnson Statement at [35] and [37].*
- ii. The monetary benefits provided by AMP Life to the AMP Licensees, in addition to the Commissions, consisted of margin share arrangements, bonus commissions and sponsorships, which were either paid to the AMP Licensees and passed on to the AMP Authorised Representatives (or their Practices), or provided directly to the AMP Authorised Representatives (or their Practices).*
- iii. Under the Development and Marketing Allowance (DMA) program, AMP Life made available the following amounts for high performing AMP Authorised Representatives (or their Practices) calculated as a percentage of the AMP Authorised Representative's (or their Practice's) revenue:*
 - a. AMPFP - \$16.205m (2014), \$18.879m (2015), \$20.107m (2016), \$20.717m (2017); and \$9.667m (2018 – incomplete year);*
 - b. Hillross - \$0.307m (2016), \$1.124m (2017), \$3.498m (2018).*
- iv. Under the STR program, AMP Life paid to Hillross the following amounts based on administration fees, fund manager fees and growth in product margins for specific products on the Hillross APL - \$2.175m (2013), \$4.006m (2014), \$3.594m (2015), \$3.236m (2016) and \$1.197m (2017).*

- v. *Under the Education Grant, AMP Life provided reimbursement for education expenses up to a capped amount for high performing AMPFP Authorised Representatives and Hillross Authorised Representatives, calculated by reference to the Advice Growth Index weighted cashflow metric.*
- vi. *Further particulars may be provided following receipt of the Respondents' discovery.*

50. At all material times, pursuant to agreements between the AMP Licensees and their respective AMP Authorised Representatives (or their Practices), the AMP Authorised Representatives (or their Practices) were entitled to be paid the Incentives (or part of them) received by the AMP Licensees in relation to the volume of and growth in sales of Commissioned Products, including the AMP Life Incentives received by the AMP Licensees in relation to AMP Life Products.

Particulars

- i. *Johnson Statement at [37].*
- ii. *U-First Financial Solutions Pty Ltd FSCG dated 1 January 2018, at pp 7-9.*
- iii. *Limited Advice Financial Plan dated 14 March 2001, at pp 9-10.*
- iv. *Further particulars may be provided following receipt of the Respondents' discovery.*

51. The matters set out at paragraphs 48 to 50 above could reasonably be expected to influence the personal advice given to clients by the AMP Authorised Representatives with respect to Commissioned Products, including any recommendation to acquire, renew or continue to hold one or more AMP Life Products.

Particulars

- i. *It was in the interests of the AMP Authorised Representatives for them and/or their Practices to receive the Incentives and to maximise the amount of Incentives they received.*
- ii. *Further to (i) above, the AMP Life Incentives could reasonably be expected to influence the advice given by an AMP Authorised Representatives that a client obtain, renew or continue to hold an AMP Life Product rather than another life or risk insurance product which did not attract the AMP Life Incentives.*

iii. Further particulars may be provided following receipt of the Respondents' discovery.

51A. During the Relevant Period, as pleaded in paragraphs 48 to 51 above, the AMP Licensees maintained and/or facilitated policies, systems or processes to provide Incentives to AMP Authorised Representatives (or their Practices) to grow sales in Commissioned Products, which had the following features:

51A.1 Incentives were received, either by the AMP Licensees or directly by the AMP Authorised Representatives (or their Practices), from various product issuers (including AMP Life) in relation to the growth and volume of Commissioned Products acquired, renewed or held by the clients of an AMP Authorised Representative;

51A.2 where Incentives were received by the AMP Licensees, paying those Incentives to the AMP Authorised Representatives (or their Practices), after deducting (in some instances) licensee fees and other amounts;

51A.3 where an AMP Authorised Representative was employed or engaged by, or otherwise operated through, a Practice, not monitoring or supervising the manner in which the Practices paid Incentives to AMP Authorised Representatives; and

51A.4 not requiring the AMP Authorised Representatives (or their Practices) to provide any additional benefit or service to clients~~the Applicants and Group Members~~ in consideration for the payment of the Incentives.

Particular

Particulars to paragraphs 48 to 50 are repeated.

E.5E.3 Buy-Back Options

52. At all material times, each of the AMP Licensees had agreements in place with their AMP Authorised Representatives pursuant to which the AMP Authorised Representative (or Practice) had the option to require the AMP Licensee to purchase the AMP Authorised Representative's (or the Practice's) client register (**Buy-Back Option**).

Particulars

- i. AMPFP Register and Buyer of Last Resort (**BOLR**) Policy effective date 1 July 2012 and effective date 1 June 2017.*

- ii. *Hillross and Charter had and have their own buy-back option policies that operate in a similar way to the AMPFP BOLR Policy: Regan Statement, at [156]. The Applicants do not hold copies of these policies.*
- iii. *Further particulars may be provided following receipt of the Respondents' discovery.*

53. At all material times, if an AMP Authorised Representative (or Practice) exercised a Buy-Back Option, the price it was entitled to be paid by the AMP Licensee for the client register (**Buy-Back Benefit**) was calculated, in part, by reference to:

53.1 a multiple of the ongoing AMP Life Commissions payable in respect of AMP Life Products on the AMP Authorised Representative's (or Practice's) customer register and not the ongoing Commissions payable in respect of third-party insurance products on the customer register; and

Particulars

- i. *The customer register valuation included an amount 4x the base ongoing commission of products on the AMPFP APL and an AMPFP approved platform: AMPFP BOLR Policy effective date 1 July 2012, at pp 9, 28-29 and 33.*
- ii. *Typically, third-party insurance products were not on an approved platform and therefore not counted in valuing the customer register.*
- iii. *Particular (ii) to paragraph 52 above is repeated.*
- iv. *Further particulars may be provided following receipt of the Respondents' discovery.*

53.2 prior to 1 June 2017, one or more of the AMP Life Incentives paid to the AMP Authorised Representative (or their Practice).

Particulars

- i. *The customer register valuation included an amount 1 x the DMA paid to the AMP Authorised Representative in the preceding 12 months; AMPFP BOLR Policy effective date 1 July 2012, at pp 9, 28-29 and 33.*
- ii. *Particular (ii) to paragraph 43 above is repeated.*
- iii. *Further particulars may be provided following receipt of the Respondents' discovery.*

54. The matters set out at paragraphs 52 and 53 above could reasonably be expected to have influenced AMP Authorised Representatives in relation to the provision of advice to clients in respect of life or risk insurance products, including when recommending whether the client acquire, renew or continue to hold one or more AMP Life Products.

Particulars

- i. It was in the interests of the AMP Authorised Representatives for them and/or their Practices to receive the Buy-Back Benefit on selling their client book to the AMP Licensees and maximising the Buy-Back Benefit to which they would be entitled.*
- ii. By reason of the matters in paragraph 53, the Buy-Back Benefit could therefore reasonably be expected to influence the advice given by an AMP Authorised Representative that a client obtain, renew or continue to hold an AMP Life Product rather than a life or risk insurance product which did not attract the AMP Life Incentives.*
- iii. Further particulars may be provided following receipt of the Respondents' discovery.*

- 54A. During the Relevant Period, as pleaded in paragraphs 52 to 53 above, the AMP Licensees had in place policies, systems and processes pursuant to which an AMP Authorised Representative (or their Practice) could require the AMP Licensee to buy back the AMP Authorised Representative's (or the Practice's) client register based on a pre-agreed valuation calculation.

Particulars

The particulars to paragraphs 52, 53.1 and 53.2 are repeated.

F CONDUCT IN RELATION TO GROUP MEMBERS

55. The AMP Authorised Representatives gave personal advice to the Applicants and Group Members to acquire, renew or continue to hold (by themselves or through their superannuation funds as members) one or more Commissioned Products.

Particulars

- i. The AMP Authorised Representatives gave personal advice in relation to Commissioned Products to the Applicants as alleged at paragraphs 10, 13, 19, 23, 27 and 32 above.*

- ii. *Further particulars may be provided following Respondents' discovery.*

56. Pursuant to that advice, the Applicants and Group Members acquired, renewed or continued to hold (by themselves or through their superannuation funds as members) one or more Commissioned Products.
57. During the Relevant Period, Commissions were paid on the Commissioned Products to the financial product issuers or, in the alternative, to the AMP Licensees on behalf of the financial product issuers, and some or all of those Commissions were deducted as administration, investment, or management fees or as part of the insurance premiums paid by the Applicants and Group Members, or were paid as part of the declared unit price for the applicable Commissioned Products.

Particulars

- i. *The particulars to paragraphs 15, 22, 31 and 36 above are repeated.*
- ii. *Particulars of the Commissions paid in respect of the Group Members' Commissioned Products will be provided following the initial trial of the common issues.*
- iii. *Further particulars may be provided following receipt of the Respondents' discovery.*

58. Throughout the Relevant Period, the AMP Licensees received Commissions from financial product issuers in relation to the Commissioned Products acquired, renewed or continued to be held by the Applicants and Group Members.

58A. No additional benefits or services were received by the Applicants and Group Members in return for the payment of the Commissions.

59. Throughout the Relevant Period, AMP Authorised Representatives (or their Practices) were remunerated by the AMP Licensees passing on to them Commissions paid by the financial product issuers to AMP Licensees when a client of the AMP Authorised Representatives acquired, renewed, varied or continued to hold a Commissioned Product, after deduction of the relevant licensee fee by the AMP Licensee.

Particulars

- i. *Regan Statement, at [86]-[92].*
- ii. *Transcript of Banking Royal Commission dated 17 April 2018 at 1150.*

60. The Commissions paid to AMP Authorised Representatives (or their Practices) were a material component of the annual remuneration of each AMP Authorised Representative (or their Practice).

Particulars

Transcript of Banking Royal Commission dated 16 April 2018 at 1068.

61. Throughout the Relevant Period, the AMP Authorised Representatives:
- 61.1 offered to provide ongoing personal advice as set out in Section H below; and
- 61.2 held themselves out as being the ‘adviser’ to the Applicants and Group Members in statements and correspondence sent to the Applicants and Group Members.

G CONDUCT IN RELATION TO STACK SUB-GROUP MEMBERS

62. The matters in this Section are pleaded further or in the alternative to Section F above.
63. In respect of the First Applicant and Stack Sub-Group Members, one or more of the AMP Authorised Representatives undertook to provide them with advice regarding their insurance needs, including the premiums payable on insurance.

Particulars

- i. The particulars to paragraph 13 are repeated.*
- ii. Particulars in relation to claims of the Stack Sub-Group Members will be provided following the initial trial of the common questions of the Applicants’ claims.*

64. During the Relevant Period, the First Applicant and Stack Sub-Group Members were each provided with personal advice by one or more of the AMP Authorised Representatives in relation to insurance products, including a recommendation that the First Applicant or Stack Sub-Group Members acquire, renew or continue to hold (by themselves or through their superannuation funds as members) one or more AMP Life Products.

Particulars

- i. The particulars to paragraph 13 are repeated.*
- ii. Particulars relating to claims of the Stack Sub-Group Members will be provided following the initial trial of the common questions of the Applicants’ claims.*

65. Pursuant to that advice, the First Applicant and Stack Sub-Group Members each acquired, renewed or continued to hold (by themselves or through their superannuation funds as members) one or more AMP Life Products.

Particulars

- i. The particulars to paragraph 14 are repeated.*
- ii. Particulars relating to the claims of the Stack Sub-Group Members will be provided following the initial trial of the common questions of the Applicants' claims.*

66. During the Relevant Period, AMP Life charged the First Applicant and Stack Sub-Group Members premiums on their AMP Life Products (**AMP Life Premiums**).

Particulars

- i. The particulars to paragraph 16 are repeated.*
- ii. Particulars relating to claims of the Stack Sub-Group Members will be provided following the initial trial of the common questions.*

67. The AMP Life Premiums charged by AMP Life were higher than the premiums payable on substantially equivalent or better insurance products that could have been obtained by the First Applicant and Stack Sub-Group Members from third-party insurers (the difference in premiums is referred to as the **Excess Premiums**).

Particulars

- i. The substantially equivalent or better insurance product that could have been obtained by the First Applicant from a third-party insurer was the Priority Protection product issued by AIA Australia Limited.*
- ii. Further particulars may be provided following receipt of the Respondents' discovery.*
- iii. Particulars relating to claims of the Stack Sub-Group Members will be provided following the initial trial of the common questions of the Applicants' claims.*

68. At all material times, the First Applicant and Stack Sub-Group Members did not know, and the AMP Authorised Representatives and AMP Licensees did not disclose to the First Applicant or Stack Sub-Group Members:

- 68.1 that the AMP Life Premiums charged by AMP Life included the Excess Premiums;

- 68.2 the nature or amount of the Excess Premiums; or
- 68.3 that substantially equivalent or better policies of insurance were available for a lower premium.
- 69. The First Applicant and Stack Sub-Group Members each paid to AMP Life the AMP Life Premiums, including the Excess Premiums, charged on their AMP Life Products.

Particulars

- i. The particulars to paragraph 16 are repeated.*
- ii. Particulars relating to claims of the Stack Sub-Group Members will be provided following the initial trial of the common questions.*

H CONDUCT IN RELATION TO OSF SUB-GROUP MEMBERS

- 70. The matters in this Section are pleaded further or in the alternative to Sections F and G above.
- 71. Throughout the Relevant Period, AMP Authorised Representatives offered to provide services on an ongoing fee basis that included:
 - 71.1 providing access to the AMP Authorised Representative through meetings or telephone calls;
 - 71.2 offering a full or partial review of the customer's portfolio at a determined frequency;
 - 71.3 conducting a full or partial review of the customer's portfolio at a determined frequency;
 - 71.4 providing educational materials such as regular newsletters, invitations to seminars, industry events, information regarding the impacts of the Federal Budget, information regarding legislative changes, and information regarding updates to policy;
 - 71.5 receiving and reviewing investment correspondence;
 - 71.6 offering special investment opportunities; and
 - 71.7 assisting with liaising with organisations such as Centrelink,

(AMP Ongoing Service Package)

Particulars

Regan Statement, at [75].

72. The Second and Fourth Applicants and the OSF Sub-Group Members accepted the AMP Authorised Representatives' offer to provide the AMP Ongoing Service Package.
73. It was a term of the AMP Ongoing Service Package that:
- 73.1 the AMP Authorised Representatives would provide annual ongoing personal advice;
- 73.2 any ongoing personal advice would comply with ss 961B and 961J of the Corporations Act;

Particulars

The term was implied by law.

- 73.3 the AMP Authorised Representatives would provide a Statement of Advice when required to do so by law; and

Particulars

The term was implied by law.

- 73.4 in consideration for the AMP Ongoing Service Package, the Second and Fourth Applicants and the OSF Sub-Group Members would pay an ongoing fee in an amount agreed with the AMP Authorised Representative on a fortnightly or monthly basis (**OSF**).
74. Pursuant to the terms of the AMP Ongoing Service Package, the Second and Fourth Applicants and the OSF Sub-Group Members were charged OSFs.
75. The OSF charged pursuant to the AMP Ongoing Service Package was generally calculated as:
- 75.1 in respect of grandfathered accounts, an amount additional to the trail Commissions paid by the product issuer to the AMP Authorised Representative, calculated as a percentage of the value of the client's investment product; or
- 75.2 as a separate ongoing service fee calculated as a percentage of the value of the investment products the subject of the personal advice; or
- 75.3 as a fixed fee via a product or invoiced directly to the client, typically charged as a set amount or by reference to an hourly rate.

Particulars

Regan Statement, at [77], [78].

76. The Second and Fourth Applicants and the OSF Sub-Group Members paid OSFs to AMP Authorised Representatives during the Relevant Period.

Particulars

- i. The Second Applicant was charged an OSF in the order of \$23.20 per month during part of the Relevant Period.*
 - ii. The Fourth Applicant was charged an OSF in the order of \$50.00 per month during part of the Relevant Period.*
77. During the Relevant Period, the AMP Authorised Representatives did not provide annual ongoing personal advice to the Second and Fourth Applicants and OSF Sub-Group Members.
78. The conduct referred to in paragraph 77 above partly arose by reason of clients not being assigned to an AMP Authorised Representative in circumstances where:
- 78.1 the product design of client accounts did not allow clients to transact on their accounts without the assistance of an AMP Authorised Representative;
 - 78.2 from on or around 1 July 2013, AMP took an inconsistent approach to reducing OSFs upon the departure of an AMP Authorised Representative where the client was not allocated a new AMP Authorised Representative but was placed in a BOLR Pool;
 - 78.3 there was no end-to-end accountability for the process of switching off OSFs;
 - 78.4 there was an inadequate control environment within AMP; and
 - 78.5 there was a poor understanding of the policies and processes for switching off OSFs;

Particulars

- i. Regan Statement, at [144]-[170].*
- ii. AMP Group Submission to the Banking Royal Commission dated 29 January 2018, at paragraph [5.4.19].*
- iii. The May 2015 Breach report at tab 24 of Exh AGR-1 to the Regan Statement.*

79. Throughout the Relevant Period, AMP Authorised Representatives had the right to require AMP to purchase the AMP Authorised Representatives' register or book of clients under the terms of a BOLR Policy.
80. Under the terms of the BOLR Policy, OSFs would be adjusted at settlement of the BOLR transaction, resulting in a removal of any uplift of the fees agreed with the AMP Authorised Representatives so that clients who were not being provided with financial services would not be paying OSFs.
81. In the premise of paragraphs 79 to 80 above, AMP was required to cease charging some OSF Sub-Group Members OSFs.
82. During the Relevant Period, OSF Sub-Group Members who were transferred into the BOLR Pool continued to pay OSFs for services which they did not receive, with the fees being received by AMP.
83. The conduct referred to in paragraph 82 above arose by reason of:
 - 83.1 insufficiently clear policy/guidance in relation to the requirement for switching off OSFs;
 - 83.2 complex and manual systems and processes for switching off OSFs;
 - 83.3 no end-to-end accountability for the process of switching off OSFs;
 - 83.4 poor understanding of the policies and processes for switching off OSFs;
 - 83.5 loss of corporate knowledge in relation to the processes and requirements in relation to the BOLR system, which was exacerbated by corporate restructurings;
 - 83.6 failure to escalate matters of concern; and
 - 83.7 an inadequate control environment.

Particulars

- i. *Regan Statement at paragraphs [144]-[170].*
 - ii. *Breach Reports to ASIC dated 27 May 2015; 5 December; 3 May 2017; 8 June 2017.*
84. An aspect of the insufficiency of the clear policy and guidance was a business practice known as the '**90 Day Exception**' where an exception to the BOLR Policy was granted to allow OSFs to remain on when clients were transferred into the BOLR Pool.

Particulars

Regan Statement, at [165].

85. The inadequacy of systems, processes and controls identified above meant that sometimes clients who were the subject of the '90 Day Exception' had their OSFs kept on for longer than 90 days and, in some cases, significantly longer, without receiving services, as they were not transferred to a new servicing adviser.

Particulars

Regan Statement, at [167].

I TRAINING, SUPERVISION AND DETECTION/MANAGEMENT OF CONFLICTS

86. During the Relevant Period, each of the AMP Licensees:
- 86.1 had in place policies available to AMP Authorised Representatives (**AMP Policies**);
 - 86.2 required AMP Authorised Representatives to have regard to policy guidelines including Quality Advice Fundamentals (**AMP QAFs**);
 - 86.3 had in place general conflict of interest policies (**AMP Conflict Policies**); and
 - 86.4 conducted a series of mandatory training modules for the AMP Authorised Representatives as part of its adviser on-boarding process including mandatory training on conflicts of interest and conflicted and banned remuneration (**AMP Mandatory Training**),
- in relation to the obligations of the AMP Authorised Representatives with respect to acting in their clients' best interests and avoidance of conflicts.

Particulars

*Witness statement of Bradley John Green to the Banking Royal Commission dated 12 April 2018 (**Green Statement**), at [10], [17], [33] and [68] and the documents referred to therein.*

87. None of the AMP Policies, AMP QAFs, AMP Conflict Policies or AMP Mandatory Training:
- 87.1 adequately identified the Commissions or Incentives paid to the AMP Authorised Representatives (or their Practices) as payments which could be reasonably expected to influence the personal advice given to clients as pleaded in paragraphs 45 to 47 above; or

- 87.2 further or in the alternative to paragraph 87.1, adequately identified the AMP Life Commissions, the AMP Life Incentives, or the Buy-Back Benefits as matters which could be reasonably expected to influence the advice given to clients as pleaded in paragraphs 47, 51 and 54 above; or
- 87.3 adequately identified the Commissions or Incentives paid to the AMP Authorised Representatives (or their Practices) as payments which might give rise to a conflict between the interests of the client and those of the relevant AMP Authorised Representative, requiring preference to be given to the client's interests; or
- 87.4 further or in the alternative to paragraph 87.3, adequately identified the AMP Life Commissions, the AMP Life Incentives, the Buy-Back Benefits or the premiums payable on AMP Life Products as matters which might give rise to a conflict between the interests of the client on the one hand, and the AMP Authorised Representatives' own interests and the interests of their Practices, the AMP Licensees and/or AMP Life on the other, requiring preference to be given to the client's interests; or
- 87.5 gave adequate guidance as to how the relevant AMP Authorised Representatives should ensure that they acted in the best interests of their clients when advising in relation to the AMP Life Products; or
- 87.6 gave adequate guidance as to how the relevant AMP Authorised Representatives should ensure that they acted in the best interests of their clients when advising in relation to ~~Relevant~~ Commissioned Products which carried Commissions and/or Incentives; or
- 87.7 gave adequate guidance as to how the relevant AMP Authorised Representatives should ensure that they acted in the best interests of their clients when advising in relation to AMP Life Products, which carried the AMP Life Commissions, the AMP Life Incentives and the Buy-Back Benefits; or
- 87.8 gave adequate guidance as to how the relevant AMP Authorised Representatives should manage the conflicts between the interests of the client on the one hand, and the AMP Authorised Representatives' own interests and the interests of their Practices, AMP Licensees and/or AMP Life on the other, requiring preference to be given to the client's interests; or
- 87.9 instructed AMP Authorised Representatives not to accept, or to rebate, remuneration pursuant to Commissions.

88. During the Relevant Period, each of the AMP Licensees utilised a conflict of interest QAF to provide guidance to the AMP Authorised Representatives on the recognition and detection of AMP Authorised Representatives receiving conflicted remuneration in contravention of Division 4 of Part 7.7A of the Corporations Act (**Conflicts of Interest QAF**).

Particulars

Green Statement, at [67].

89. At all material times, the Conflicts of Interest QAF was limited to detecting and providing guidance to AMP Authorised Representatives on remuneration that was banned by Division 4 of Part 7.7A of the Corporations Act and did not identify the Commissions or Incentives as conflicted remuneration necessitating further investigation and/or explanation from the relevant AMP Authorised Representative who (or whose Practice) received the payment.

Particulars

- i. Green Statement, at [67].*
- ii. Conflicts of Interest QAF dated December 2014 page 16; Conflicts of Interest QAF dated November 2016 page 19; Conflicts of Interest QAF dated February 2017 page 24; and Conflicts of Interest QAF dated November 2017. page 27.*

90. During the Relevant Period, the AMP Licensees did not have an equivalent to the Conflicts of Interest QAF for detecting Commissions or Incentives other than those banned by Division 4 of Part 7.7A of the Corporations Act which might cause the personal advice of AMP Authorised Representatives to be influenced as pleaded in paragraphs 47 and 51 above.
91. During the Relevant Period, the AMP Licensees did not monitor and/or supervise the payment arrangements between AMP Authorised Representatives and their clients in so far as those arrangements involved the payment of the Commissions.

Particulars

- i. Green Statement, at [70].*
- ii. Transcript of Banking Royal Commission dated 17 April 2018, at 1153.*

92. During the Relevant Period, the AMP Authorised Representatives were required to record and maintain a conflicts of interest register and register all conflicts of interest to enable AMP to monitor the receipt of these items (the **AMP Conflicts Register**).

93. The AMP Conflicts Register did not allow for the recording of the Commissions (including AMP Life Commissions) paid to the AMP Authorised Representatives (or their Practices).

Particulars

Conflicts of Interest QAF dated December 2014 page 16; Conflicts of Interest QAF dated November 2016 page 19; Conflicts of Interest QAF dated February 2017 page 24; and Conflicts of Interest QAF dated November 2017 page 27.

94. The policies, training, supervision, and monitoring systems and processes described in paragraphs 86 to 93 above:

94.1 were premised on it being appropriate for the AMP Licensees and AMP Authorised Representatives (or their Practices) to continue pursuing and receiving Commissions;

94.2 did not adequately manage the conflicts described at paragraphs 87.3 and 87.4 above;

94.3 did not ensure that advisers gave personal advice that was in the best interests of clients, in that they did not ensure that advisers based all judgments on the clients' circumstances (rather than on the payment of Commissions, AMP Life Commissions, the AMP Life Incentives, or the Buy-Back Benefits, or the premiums payable on AMP Life Products);

94.4 had the defects identified at paragraph 87 above; and

94.5 did not ensure that advisers complied with any contractual obligation to provide ongoing personal advice (as to which see paragraphs 70 to 85 above).

J APPROVED PRODUCTS

95. At all material times, the AMP Licensees had one or more approved product lists containing life and risk insurance products (**Insurance APLs**) that the AMP Authorised Representatives were and are authorised to recommend to retail clients.

Particulars

i. AMP 'Advice Research Process Manual', dated March 2015, June 2016 and June 2017.

ii. Further particulars may be provided following receipt of the Respondents' discovery.

96. At all material times, the AMP Life Products were included on the Insurance APLs.

97. At all material times, the Insurance APLs failed to include one or more insurance products from a third-party insurer that was substantially equivalent or better and available for a lower premium than the AMP Life Products acquired, renewed or held by the First Applicant and the Stack Sub-Group Members.

Particulars

Further particulars of the Insurance APLs may be provided following receipt of the Respondents' discovery.

98. At all material times, the AMP Authorised Representatives required one-off approval from AMP Advice Research to recommend an insurance product not on the Insurance APLs (**One-Off Approval Requirement**).

Particulars

- i. AMP 'Advice Research Process Manual' March 2015, June 2016 and June 2017, at pp 22-23.
- ii. AMP Life Risk Insurance Research Policy and APL – AMPFP, Charter FP and Hillross FP.
- iii. *Further particulars may be provided following receipt of the Respondents' discovery.*

- 98A. During the Relevant Period, in order to obtain one-off approval to recommend an insurance product not on the applicable Insurance APL in accordance with the One-Off Approval Requirement, the AMP Authorised Representatives:

98A.1 for new business, were required to provide evidence that no product on the Insurance APL included the feature requested and that there was a 10% and/or minimum \$300 per annum price saving compared to the products on the Insurance APL; and

98A.2 for existing business, where the client had an 'in-force' insurance product not on an Insurance APL, could only obtain approval where the client was exercising a buy-back facility, guaranteed or future insurability option, continuation option or where the client was applying for a change in policy terms and did not require underwriting.

Particulars

Johnson Statement at [113] and [114].

99. At all material times, the AMP Licensees had issued guidelines on how the products on their Insurance APLs are benchmarked (**Benchmarking Guidelines**) for the purpose of providing guidance to the AMP Authorised Representatives.

Particulars

- i. *AMPFP and Hillross 'Benchmarking Guideline – Life Risk Insurance', versions dated June 2014, 2016, 2017 and 2018.*
- ii. *Further particulars may be provided following receipt of the Respondents' discovery.*

100. At all material times, the Insurance APLs and Benchmarking Guidelines did not include sufficient information for the AMP Authorised Representatives to determine whether there were insurance products that were substantially equivalent or better than the AMP Life Products and available to be obtained from a third-party insurer for a lower premium.
101. At all material times, the AMP Licensees had issued approved product lists which contained the platforms that their Authorised Representatives were and are authorised to recommend to the retail clients (**Platform APLs**).
102. At all material times, the platforms that were listed on the Platform APLs were primarily limited to AMP's platforms.

Particulars

*Banking Royal Commission, evidence of A G Regan,
Transcript at p 1065, line 41.*

103. At all material times, the only life and risk insurance products that could be placed on AMP's platforms were insurance products issued by AMP Life.

103A. At all material times:

103A.1 the AMP Licensees applied written policies which set out the process by which products were added to or removed from the Insurance APLs and Platform APLs; and

103A.2 the AMP Licensees Investment and Advice Committee or the AMP Product Review Committee were responsible for decisions about the composition of the Insurance APLs and Platform APLs.

Particulars

- i. *Green Statement at [21] to [23].*
- ii. *AMP 'Advice Research Process Manual' March 2015, June 2016 and June 2017.*
- iii. *Johnson Statement at [82].*

~~405.104.~~ At all material times, AMP Superannuation Limited (**ASL**) was:

~~405.1~~104.1 part of the AMP Group;

~~405.2~~104.2 a wholly owned subsidiary of AMP Life; and

~~405.3~~104.3 the trustee of a number of superannuation funds (**ASL Super Funds**).

Particulars

*Banking Royal Commission, witness statement of
Richard Hugh Allert dated 25 July 2018, Rubric 5-15,
at [1], [15].*

~~406.105.~~ N M Superannuation Proprietary Limited (**NMS**; together with ASL, the **AMP Trustees**):

~~406.1~~105.1 was at all material times part of the AMP Group;

~~406.2~~105.2 was, since 1 January 2017, a wholly owned subsidiary of AMP Life; and

~~406.3~~105.3 was at all material times the trustee of a number of superannuation funds (**NMS Super Funds**, and together with the ASL Super Funds, the **AMP Super Funds**).

Particulars

*Banking Royal Commission, witness statement of
Richard Hugh Allert dated 25 July 2018, Rubric 5-06,
at [1], [15].*

~~407.106.~~ At all material times:

~~407.1~~106.1 the AMP Trustees permitted members of the AMP Super Funds to hold one or more AMP Life Products through or in their superannuation account and paid the premiums on those AMP Life Products directly to AMP Life from funds in the members' superannuation accounts;

Particulars

The particulars to paragraph 39 are repeated.

~~407.2~~106.2 for a member of an AMP Super Fund to hold insurance issued by a third-party insurer through his or her superannuation account, and to have the premiums payable on that product paid to the third-party insurer from the funds in the member's superannuation account, the AMP Trustees required the establishment of:

- (a) a separate trust account from which the premiums payable on the third-party insurance product would be paid; and
- (b) a regular sweep of funds in the member's superannuation account to be deposited into the separate trust account,

(the **Third Party Insurance in Super Requirements**).

~~408-107.~~ The matters set out at paragraphs 98 and 106 above could reasonably be expected to have influenced the AMP Authorised Representatives in relation to the provision of advice in respect of life or risk insurance products, including when recommending that the client acquire, renew or continue to hold one or more AMP Life Products.

Particulars

- i. *By reason of the One-Off Approval Requirement, an AMP Authorised Representative had to take the additional steps of obtaining one-off approval to recommend to a client a life or risk insurance product issued by a third-party financial product insurer that was not on the Insurance APL than to recommend an AMP Life Product, regardless of whether the third-party product was better or equivalent and cheaper than the AMP Life Product.*
- ii. *By reason of the Third Party Insurance in Super Requirements, an AMP Authorised Representative acting for a retail client who was a member of an AMP Super Fund, or had decided to join an AMP Super Fund, had to take additional steps to obtain insurance issued by a third-party insurer through the client's superannuation account than to obtain an AMP Life Product through the client's superannuation account.*
- iii. *Exhibit BJG-1, Tab 30 to the Green Statement and the analysis of premiums paid in respect on in-house products included therein.*

K RESPONSIBILITY OF THE AMP LICENSEES FOR THE AMP AUTHORISED REPRESENTATIVES

~~409-108.~~ In acting as pleaded in this ~~Consolidated~~ Amended Statement of Claim in Sections C, F, G and H, the AMP Authorised Representatives were engaging in conduct:

~~409.1~~108.1 within the scope of their authority as agents and authorised representatives of their respective AMP Licensee;

~~409.2~~108.2 that relates to the provision of a financial service within the meaning of s 917A(1)(a) of the Corporations Act; and

~~409.3~~108.3 on which the Applicants and each Group Member could reasonably be expected to rely within the meaning of s 917A(1)(b) of the Corporations Act.

~~440.~~109. The Applicants and each Group Member in fact relied in good faith upon the conduct of the AMP Authorised Representatives within the meaning of s 917A(1)(c) of the Corporations Act.

~~441.~~110. By reason of the matters pleaded in paragraphs 108 to 109, the relevant AMP Licensee is responsible for the conduct of its Authorised Representatives, by reason of ss 917B and 917E of the Corporations Act.

~~442.~~111. By reason of the matters pleaded in paragraph 110, the Applicants and Group Members have the same remedies pleaded in this ~~Consolidated~~ Amended Statement of Claim against the AMP Licensees as they have against the AMP Authorised Representatives, by reason of s 917F of the Corporations Act.

L RELEVANT PERSONNEL

~~443.~~112. Bradley John Green was, as at 12 April 2018:

~~443.1~~112.1 Director of Advice and Research, AMP; and

~~443.2~~112.2 responsible for the management of the advice licensee policy function, including applicable AMP QAFs.

~~444.~~113. Anthony George Regan was, as at 11 April 2018:

~~444.1~~113.1 Group Executive, Advice and New Zealand, AMP;

~~444.2~~113.2 the senior executive within the AMP Group responsible for the management of AMP's advice business;

~~444.3~~113.3 a member of the AMP Group Leadership Team; and

~~444.4~~113.4 a Director of AMPFP, Charter and Hillross.

~~415-114.~~ _____ Gregory Robert Johnson was, as at 10 September 2018, the Director of Insurance Proposition, AMP Life.

~~416-115.~~ _____ The knowledge of Mr Green is attributed to AMP, by reason of the fact that he was an agent and senior employee of AMP and as such was under a duty to communicate to the board of AMP the knowledge gained by him in his positions.

~~417-116.~~ _____ The knowledge of Mr Regan is attributed to AMP, AMPFP, Charter and Hillross, by reason of the fact that he was an agent and senior employee of AMP and a Director of AMPFP, Charter and Hillross and as such was under a duty to communicate to the board of AMP the knowledge gained by him in his positions.

~~418-117.~~ _____ The knowledge of Mr Johnson is attributed to AMP Life by reason of the fact that he was an agent and senior employee of AMP Life and as such was under a duty to communicate to the board of AMP Life the knowledge gained by him in his positions.

~~419-118.~~ _____ The admissions made by Mr Green in the statements provided to the Banking Royal Commission as pleaded in this ~~Consolidated~~ Amended Statement of Claim are taken to be admissions by AMP, by reason of the fact that Mr Green had authority to make statements on behalf of AMP in relation to the matters with respect to which the statements were made.

~~420-119.~~ _____ The admissions made by Mr Regan in the statements provided to the Banking Royal Commission as pleaded in this ~~Consolidated~~ Amended Statement of Claim are taken to be admissions by AMP, AMPFP, Charter and Hillross, by reason of the fact that Mr Regan had authority to make statements on behalf of AMP, AMPFP, Charter and Hillross in relation to the matters with respect to which the statements were made.

~~421-120.~~ _____ The admissions made by Mr Johnson in the statements provided to the Banking Royal Commission, as pleaded in this ~~Consolidated~~ Amended Statement of Claim are taken to be admissions by AMP Life by reason of the fact that Mr Regan had authority to make statements on behalf of AMP Life in relation to the matters with respect to which the statements were made.

M FUTURE OF FINANCIAL ADVICE OBLIGATIONS AND CONTRAVENTIONS

M.1 Best Interests

~~422-121.~~ _____ The advice provided by the AMP Authorised Representatives to the Applicants and Group Members, referred to in paragraphs 55, and further paragraph 64, was financial

product advice within the meaning of s 766B(1) of the Corporations Act, in that the advice contained recommendations that:

~~422.1~~121.1 were intended to influence the Applicants and Group Members in making a decision in relation to policies of insurance; or

~~422.2~~121.2 could reasonably be regarded as being intended to have such an influence.

Particulars

- i. The particulars to paragraph 55 and 64 are repeated.*
- ii. Particulars in respect of the personal advice provided to Group Members will be provided following the initial trial of the common questions.*

~~423.1~~122. The advice provided by the AMP Authorised Representatives (or some of them) to the Applicants and Group Members referred to in paragraph 121 above, was personal advice within the meaning of s 766B(3) of the Corporations Act, in that it was given to the Applicants and Group Members in circumstances where:

~~423.1~~122.1 the AMP Authorised Representatives had considered one or more of the objectives, financial situation or needs of the Applicants and Group Members; or

~~423.2~~122.2 a reasonable person might expect that the AMP Authorised Representatives had considered one or more of the objectives, financial situation or needs of the Applicants and Group Members.

Particulars

The particulars at paragraph 121 are repeated.

~~424.1~~123. By providing personal advice to the Applicants and Group Members, the AMP Authorised Representatives were providing a financial service within the meaning of s 766A(1) of the Corporations Act.

~~425.1~~124. The financial services were provided to the Applicants and Group Members as retail clients within the meaning of s 761G(1) of the Corporations Act.

~~426.1~~125. In relation to the provision of the financial services, the AMP Authorised Representatives were providers within the meaning of s 961(2) of the Corporations Act.

~~427.1~~126. By reason of the matters pleaded in paragraphs 121 to 125 above, at all material times each of the AMP Authorised Representatives was under an obligation to act in the

best interests of the Applicants and each of the Group Members in relation to the personal advice.

Particulars

Section 961B(1) of the Corporations Act.

~~128.~~127. At all material times, there was a conflict between the interests of the Applicants and Group Members, on the one hand, and the interests of the relevant AMP Authorised Representatives (and, if applicable, their Practices) and AMP Licensees on the other.

Particulars

- i. The particulars to paragraphs 47 and 51 above are repeated.*
- ii. It was in the interests of the Applicants and Group Members for the payment of Commissions payable on their Commissioned Products to cease.*
- iii. It was in the interests of the AMP Licensees to receive the Commissions and maximise the amount of Commissions they received.*
- iv. It was in the interests of the AMP Authorised Representatives (and, if applicable, their Practices) for them (and their Practices) to receive the Commissions and maximise the amount of Commissions they received.*

~~130.~~128. Further or in the alternative to paragraph 127 above, at all material times, there was a conflict between the interests of the First Applicant and Stack Sub-Group Members, on the one hand, and the AMP Authorised Representatives' own interests and the interests of their Practices, AMP Licensees and/or AMP Life on the other.

Particulars

- i. The particulars to paragraphs 47, 51, 54 and 107 are repeated.*
- ii. It was in the interests of the First Applicant and Stack Sub-Group Members to obtain, renew, or otherwise retain the best insurance product with the lowest premiums.*
- iii. It was in the interests of the First Applicant and Stack Sub-Group Members for the AMP Authorised Representatives to act in their best interests in relation to the advice provided to them.*

- iv. *It was in the interests of the First Applicant and Stack Sub-Group Members for the AMP Authorised Representatives to give advice that was not affected, or potentially affected by any financial interest of the AMP Licensee, the AMP Authorised Representative or their associates.*
- v. *By reason of the AMP Life Commissions, AMP Life Incentives, Buy-Back Benefits, One-Off Approval Requirement and the Third-Party Insurance in Super Requirements, it was in the interests of the AMP Authorised Representatives (and, if applicable, their Practices) for their clients, including the First Applicant and Stack Sub-Group Members, to acquire, renew or continue to hold AMP Life Products rather than insurance products issued by a third-party provider.*
- vi. *By reason of the AMP Life Commissions and AMP Life Incentives, it was in the interests of the AMP Licensees for the First Applicant and Stack Sub-Group Members to acquire, renew or continue to hold AMP Life Products rather than insurance products issued by a third-party provider.*
- vii. *By reason of the AMP Life Premiums payable to AMP Life on the AMP Life Products, it was in the interests of AMP Life for the First Applicant and Stack Sub-Group Members to acquire, renew or continue to hold AMP Life Products.*

~~434.129.~~ During the Relevant Period, the AMP Authorised Representatives failed to act in the best interests of the Applicants and Group Members by:

~~434.1~~129.1 failing to base all judgments in advising the Applicants and Group Members on the Applicants' and Group Members' relevant circumstances (rather than on the receipt of Commissions);

~~434.2~~129.2 failing to take steps that, at the time the personal advice was provided, would reasonably be regarded as being in the Applicants' and Group Members' best interests;

~~434.3~~129.3 failing to "dial down" or "switch off" the Commissions to remove any conflict;

~~434.4~~129.4 failing to rebate the Commissions to the Applicants and Group Members;

~~131.5~~129.5 failing to take reasonable steps to ensure that the financial interests of the Applicants and Group Members would not be adversely affected by the conflicts of interest referred to in paragraph 127 above;

~~131.6~~129.6 pursuing, receiving or not rebating the Commissions in circumstances where:

- (a) no additional benefits or services would be received by the Applicants and Group Members in return for the payment of the Commissions;
- (b) it was in the financial interests of the Applicants and Group Members for the Commission payments to cease;
- (c) it was in the financial interests of the AMP Licensees and AMP Authorised Representatives (and, if applicable, their Practices) for the Applicants and Group Members to continue paying the Commissions; and
- (d) it was in the interests of the AMP Licensees to maintain good relations with the AMP Authorised Representatives in relation to the promotion and distribution of the Commissioned Products by continuing to pay the AMP Authorised Representatives (or their Practices) the Commissions (or part of them);

~~131.7~~129.7 failing to consider, or advise whether, and to what extent, the financial interests of the Applicants and Group Members would be adversely affected by the payment of the Commissions or Incentives;

~~131.8~~129.8 failing to disclose to the Applicants and Group Members that:

- (a) the advice, or the decision about whether to give advice, was influenced by the Commissions or Incentives; and
- (b) it would have been possible to obtain the same products without paying the Commissions; and

~~131.9~~129.9 failing to keep any records, or adequate records, of the advice given to the Applicants and Group Members by the AMP Authorised Representatives.

Particulars

- i. The Respondents' have failed to keep documents, Statements of Advice and/or*

member statements of advice given to the Applicants.

- ii. Particulars of the Group Members' claims will be provided following the initial trial of the common questions.*

~~432.1~~130. Further to paragraph 129, during the Relevant Period, the AMP Authorised Representatives failed to act in the best interests of the First Applicant and Stack Sub-Group Members by:

~~432.1~~130.1 giving the personal advice to the First Applicant and Group Members referred to at paragraph 64 above, which included a recommendation that the First Applicant Group Members acquire, renew or continue to hold one or more AMP Life Products at premiums which included the Excess Premiums;

~~432.2~~130.2 failing to take reasonable steps to investigate, consider and assess insurance products which were substantially equivalent or better than the AMP Life Products and available to be obtained from third-party insurers for a lower premium;

Particulars

- i. The AMP Authorised Representatives failed to benchmark the AMP Life Products against one or more insurance products that were substantially equivalent or better than the AMP Life Products and available to be obtained from third-party insurers for a lower premium.*
- ii. The AMP Authorised Representatives failed to use research reports by external research providers.*
- iii. The AMP Authorised Representatives relied on an Insurance APL that was not properly constructed, as alleged at paragraph 97 above.*
- iv. The AMP Authorised Representatives failed to obtain or review adequate information to enable the AMP Authorised Representatives to determine whether the Insurance APL had been properly constructed.*

~~432.3~~130.3 failing to recommend one or more insurance products that were substantially equivalent or better than the AMP Life Products and available to be obtained from third-party insurers for a lower premium;

~~132.4~~130.4 failing to take reasonable steps to ensure that the financial interests of the First Applicant and Stack Sub-Group Members would not be adversely affected by the conflicts of interest referred to in paragraph 128 above;

~~132.5~~130.5 failing to take reasonable steps to ensure that the AMP Authorised Representatives' duties to the First Applicant and Stack Sub-Group Members would be met despite the conflicts of interest referred to in paragraph 128 above;

~~132.6~~130.6 failing to disclose to the First Applicant and Stack Sub-Group Members:

- (a) that the premiums charged on the AMP Life Products included the Excess Premiums;
- (b) the nature or amount of the Excess Premiums; and/or
- (c) that substantially equivalent or better insurance products were available for which a premium was payable that did not include the Excess Premiums;

~~132.7~~130.7 complying with the One-Off Approval Requirement not to advise the First Applicant and Stack Sub-Group Members in relation to insurance products not on the relevant Insurance APLs without obtaining one-off approval from AMP Advice Research;

~~132.8~~130.8 failing to obtain one-off approval from AMP Advice Research to advise in relation to insurance products not on the relevant Insurance APLs; and

~~132.9~~130.9 in the alternative to subparagraphs 130.1 to 130.8 above, failing to decline to advise the client.

~~133.~~131. Further to paragraphs 129 and 130, during the Relevant Period the AMP Authorised Representatives failed to act in the best interests of the Second and Fourth Applicants and OSF Sub-Group Members by failing to provide ongoing personal advice as alleged in Section H above in circumstances where:

~~133.1~~131.1 the AMP Licensees and/or the AMP Authorised Representatives were contractually obliged to provide that advice; and

~~133.2~~131.2 the AMP Licensees continued to charge fees to the Second and Fourth Applicants and OSF Sub-Group Members for that advice notwithstanding the failure to provide that advice;

~~134.~~132. By reason of the conduct alleged in paragraphs 127 to 131 above (individually, together or in any combination), the AMP Authorised Representatives contravened s_961B(1) of the Corporations Act.

M.2 Conflict of Interests

~~135.~~133. Further or in the alternative to Section M.1, each of the AMP Authorised Representatives knew, or reasonably ought to have known, of the conflicts of interests referred to at paragraph 127 and 128 above.

Particulars

The matters pleaded at paragraphs 45, 46, 50, 53, 98 and 106 above are repeated.

~~136.~~134. By reason of the matters pleaded in paragraphs 121 to 125 and 132 above, at all material times, the AMP Authorised Representatives were under an obligation to give priority to the interests of the Applicants and Group Members.

Particulars

Section 961J(1) of the Corporations Act.

~~137.~~135. During the Relevant Period, the AMP Authorised Representatives failed to give priority to the interests of the Applicants and Group Members in circumstances where there was a conflict between those interests on the one hand, and the AMP Authorised Representatives' own interests and the interests of their Practices and the AMP Licensees on the other, by:

~~137.1~~135.1 giving the personal advice referred to at paragraph 55 above to the Applicants and Group Members;

~~137.2~~135.2 failing to disclose to the Applicants and Group Members that:

- (a) the personal advice could reasonably be expected to have been influenced by the Commissions; and
- (b) it would have been possible to obtain the same products without paying the Commissions;

~~137.3~~135.3 failing to "dial down" or "switch off" the Commissions to remove any conflict;

~~137.4~~135.4 failing to rebate the Commissions to the Applicants and each of the Group Members;

~~137.5~~135.5 failing to avoid the conflicts of interest referred to in paragraph 127 above;

~~437.6~~135.6 __improperly using his or her position to gain a benefit for the AMP Licensees and/or the AMP Authorised Representatives (or their Practices);

~~437.7~~135.7 __failing to advise the Applicants and Group Members that the Commissions could be “dialled down”, “switched off” or rebated to the client, or that the AMP Authorised Representatives’ fees could be reduced by the amount of the Commissions;

~~437.8~~135.8 __pursuing, receiving or not rebating the Commissions in circumstances where:

- (a) no additional benefits or services would be received by the Applicants and Group Members in return for the payment of the Commissions;
- (b) it was in the financial interests of the Applicants and Group Members for the Commission payments to cease;
- (c) it was in the financial interests of the AMP Licensees and the AMP Authorised Representatives (and if applicable, their Practices) for the Applicants and each of the Group Members to continue paying the Commissions; and
- (d) it was in the interests of the AMP Licensees to maintain good relations with the AMP Authorised Representatives in relation to the promotion and distribution of the Commissioned Products by continuing to pay the AMP Authorised Representatives (or their Practices) the Commissions (or part of them);

~~437.9~~135.9 __failing to keep any records, or adequate records, of the advice given to the Applicants and Group Member by the AMP Authorised Representatives.

~~438.1~~136. __Further to paragraph 135 above, during the Relevant Period, the AMP Authorised Representatives failed to give priority to the interests of the First Applicant and Stack Sub-Group Members in circumstances where there was a conflict between those interests on the one hand, and the AMP Authorised Representatives’ own interests and the interests of their Practices, AMP Licensees and AMP Life on the other, by:

~~438.4~~136.1 __giving the advice referred to at paragraph 64 above to the First Applicant and Stack Sub-Group Members which included a recommendation that they acquire, renew or continue to hold one or more AMP Life Products;

~~138.2~~136.2 failing to recommend one or more insurance products that were substantially equivalent or better than the AMP Life Products and available to be obtained from third-party insurers for a lower premium;

~~138.3~~136.3 failing to avoid the conflicts of interest referred to at paragraph 128 above;

~~138.4~~136.4 failing to take reasonable steps to ensure that the AMP Authorised Representatives' obligation to give priority to the interests of the First Applicant and Stack Sub-Group Members would be met despite the conflicts of interest referred to in paragraph 128 above;

~~138.5~~136.5 improperly using their position to gain a benefit for themselves, the AMP Licensees and/or AMP Life;

Particulars

- i. The benefits to the AMP Authorised Representatives were the receipt of the AMP Life Commissions, the AMP Life Incentives and the Buy-Back Benefits, and avoiding the One-Off Approval Requirement and the Third-Party Insurance in Super Requirements.*
- ii. The benefit to the AMP Licensees was the receipt of the AMP Life Commissions and the AMP Life Incentives.*
- iii. The benefit to AMP Life was the receipt of the premiums charged on the AMP Life Products, which included the Excess Premiums.*

~~138.6~~136.6 failing to obtain one-off approval from AMP Advice Research to advise the Applicants and Group Members in relation to insurance products not on the relevant Insurance APLs; and

~~138.7~~136.7 failing to disclose to the First Applicant and Stack Sub-Group Members:

- (a) that the premiums charged on the Insurance Policies included the Excess Premiums;
- (b) of the nature or amount of the Excess Premiums; and/or
- (c) that substantially equivalent or better policies of insurance were available for which a premium was payable that did not include the Excess Premiums.

~~439.~~137. Further to paragraphs 135 and 136, during the Relevant Period, the AMP Authorised Representatives failed to give priority to the interests of to the Second and Fourth Applicants and OSF Sub-Group Members in circumstances where there was a conflict between those interests on the one hand, and the AMP Authorised Representatives' own interests and the interests of the AMP Licensees on the other, by failing to provide ongoing personal advice as alleged in Section H above in circumstances where:

~~439.~~137.1 the AMP Licensees and/or the AMP Authorised Representatives were contractually obliged to provide that advice; and

~~439.~~137.2 the AMP Licensees continued to charge fees to the Second and Fourth Applicants and OSF Sub-Group Members for that advice notwithstanding the failure to provide that advice.

~~440.~~138. By reason of the conduct alleged at paragraphs 133 to 137 above (individually, together or in any combination) the AMP Authorised Representatives contravened s.961J(1) of the Corporations Act.

M.3 Failure to take reasonable steps

~~441.~~139. Further to Section M.1 and M.2, at all material times, the AMP Licensees were under an obligation to take reasonable steps to ensure the AMP Authorised Representatives in their respective networks complied with ss 961B(1) and 961J(1) of the Corporations Act.

Particulars

Section 961L of the Corporations Act.

~~442.~~140. Each of the AMP Licensees knew, or ought reasonably to have known, about, any or all of the matters pleaded at paragraphs 47A (Commissions), 51A (Incentives), 54A (Buy-Back Benefit) paragraphs 63 to 69 (excess premiums), 59 59 to 60 (remuneration) 86 to 94 (training failures), 91 (supervision breaches), 70 to 85 (fee for no service breaches), and 95 to 107 (approved products lists) from the time that they occurred.

~~443.~~141. During the Relevant Period, the AMP Licensees failed to take reasonable steps to ensure that the AMP Authorised Representatives complied with ss 961B(1) and 961J(1) of the Corporations Act by (together, separately or in any combination):

~~443.~~141.1 reason of the matters pleaded in paragraph 140 above, and ~~each~~ any or all of the matters pleaded at ~~paragraphs 63 to 69 (excess premiums), 59 59 to 60~~

~~(remuneration) paragraphs 47A (Commissions), 51A (Incentives), 86 to 94 (training failures), 91 (supervision breaches), 70 to 85 (fee for no service breaches), and 95 to 107 (approved product lists);~~

~~143.2~~141.2 failing to take reasonable steps to implement appropriate policies, systems and processes designed to ensure that the AMP Authorised Representatives did not engage in the conduct alleged at paragraphs 129 to 131 above in contravention of s 961B(1) of the Corporations Act;

141.3 failing to take reasonable steps to implement appropriate policies, systems and processes designed to ensure that the AMP Authorised Representatives did not engage in the conduct alleged at paragraphs 135 to 137 above in contravention of s 961J(1) of the Corporations Act;

141.3A reason that the policies, systems and processes, described in paragraphs 86 to 93 above, were premised on it being appropriate for the AMP Licensees and AMP Authorised Representatives (or their Practices) to pursue and receive Commissions;

~~143.3~~141.4 failing to take reasonable steps to ensure that AMP Authorised Representatives were maintaining adequate records of the advice given (if any);:-

~~143.4~~141.5 failing to instruct the AMP Authorised Representatives to “dial down”, “switch off” or rebate the Commissions;

~~143.5~~141.6 failing to instruct AMP Authorised Representatives to reduce the Representatives’ fees by the amount of the Commissions; and

~~143.6~~141.7 failing to take reasonable steps to ensure that the instructions referred to in paragraphs 141.5 and 141.6 above were complied with, and (in the event they were not) prohibited the AMP Authorised Representatives (or their Practices) to receive the Commissions.

~~144.1~~142. Further or in the alternative to paragraph 141 above, during the Relevant Period, the AMP Licensees failed to take reasonable steps to ensure that the AMP Authorised Representatives complied with ss 961B and 961J of the Corporations Act with respect to the First Applicant and Stack Sub-Group Members by (together, separately or in any combination);:-

142.1A reason of the matters pleaded in paragraph 140 above, and each of the matters pleaded at paragraphs 47A (Commissions), 51A (Incentives), 54A (Buy-Back Benefit), and/or 95 to 107 (approved products);

~~144.1~~142.1 failing to take reasonable steps to produce Insurance APLs and Benchmarking Guidelines which prioritised the interests of retail clients by including insurance products from third-party insurers that were substantially equivalent or better than the AMP Life Products and available for lower premiums for the purpose of the AMP Authorised Representatives providing advice on insurance products which was in the best interests of retail clients;

~~144.2~~142.2 failing to take reasonable steps to include on the Insurance APLs insurance products from third-party insurers that were substantially equivalent or better than the AMP Life Products and available for lower premiums, thereby requiring the AMP Authorised Representatives to seek one-off approval to recommend those other insurance products;

~~144.3~~142.3 failing to take reasonable steps to amend or widen the Insurance APLs to include one or more insurance products from third-party insurers that were substantially equivalent or better than the AMP Life Products and available for lower premiums, which the AMP Authorised Representatives could recommend without the need to seek one-off approval;

~~144.4~~142.4 failing to take reasonable steps to amend or widen the Platform APLs which listed platforms that included one or more insurance products from third-party insurers that were substantially equivalent or better than the AMP Life Products and available for lower premiums, which the AMP Authorised Representatives could recommend without the need to seek one-off approval;

~~144.5~~142.5 failing to take reasonable steps to remove (or request the AMP Super Trustees remove) the incentive created by the Third Party Insurance in Super Requirements for AMP Authorised Representatives to recommend that the First Applicant and Stack Sub-Group Members who were members of an AMP Super Fund, or were advised to join an AMP Super Fund, acquire, renew or continue to hold an AMP Life Product through their superannuation account rather than acquire insurance issued by a third party insurer through their superannuation account;

~~144.6~~142.6 failing to take reasonable steps to remove (or request AMP Life remove) the incentive created by the AMP Life Commissions for the AMP Authorised Representatives to recommend that the First Applicant and Stack Sub-Group Members acquire, renew or continue to hold AMP Life Products;

~~144.7~~142.7 failing to take reasonable steps to remove (or request AMP Life remove) the incentive created by the AMP Life Incentives for the AMP Authorised Representatives to recommend that the First Applicant and Stack Sub-Group Members acquire, renew or continue to retain AMP Life Products;

~~144.8~~142.8 failing to take reasonable steps to manage or address the conflict created between the First Applicant's and Stack Sub-Group Members' interests on the one hand, and the AMP Licensees' own interests and the interests of the AMP Authorised Representatives (and, if applicable, their Practices) ~~and AMP Life~~ on the other, as a consequence of the Buy-Back Benefits, and to manage or remove the incentive created by the Buy-Back Benefits for the AMP Authorised Representatives to recommend that the First Applicant and Stack Sub-Group Members acquire, renew or continue to retain AMP Life Products;

~~144.9~~142.9 failing to take reasonable steps to ensure that there were policies and systems in place designed to safeguard against the AMP Authorised Representatives engaging in conduct (as alleged at paragraph 129 above) that would contravene s 961B(1) of the Corporations Act, and that those policies and systems were followed, enforced and regularly reviewed;

~~144.10~~142.10 failing to take reasonable steps to ensure that there were policies and systems in place designed to safeguard against the AMP Authorised Representatives engaging in conduct (as alleged at paragraph 136 above) that would contravene s 961J(1) of the Corporations Act, and that those policies and systems were followed, enforced and regularly reviewed;

~~144.11~~142.11 failing to take reasonable steps to ensure that:

- (a) the AMP Authorised Representatives were adequately trained and competent to provide advice which did not cause them to contravene their obligations to the First Applicant and Stack Sub-Group Members under ss_961B and 961J of the Corporations Act; and
- (b) the AMP Licensees had in place adequate processes and systems to monitor and supervise the AMP Authorised Representatives to ensure compliance

with ss 961B and 961J of the Corporations Act in relation to the provision of advice to the First Applicant and Stack Sub-Group Members; and

~~144.12~~142.12 the AMP Licensees had in place adequate processes and systems to manage risks in their advice businesses as a consequence of the conflicts created by reason of the AMP Life Commissions, AMP Life Incentives, Buy-Back Options, the One-Off Approval Requirement and the Third-Party Insurance in Super Requirements.

~~145.143.~~ By reason of the conduct alleged in paragraphs 141 to 142 above (individually, together or in any combination), the AMP Licensees contravened s 961L of the Corporations Act.

M.4 Loss and Damage

~~146.144.~~ The Applicants and Group Members each suffered loss or damage as a result of the contraventions pleaded at paragraphs 132, 138 and 143 above.

Particulars

- i. The Applicants and Group Members paid the Commissions, and further or in the alternative, the Respondents received and earned profit on the Commissions.*
- ii. The particulars to paragraphs 15, 22, 31 and 36 above are repeated.*
- iii. Further or in the alternative, the First Applicant and the Stack Sub-Group Members paid the Excess Premiums on the AMP Life Products acquired, renewed or continued to be held pursuant to the recommendations of the AMP Authorised Representatives.*
- iv. The particulars at paragraph 69 are repeated.*
- v. Sections 961M(2) and (4) of the Corporations Act.*
- vi. Particulars relating to claims of Group Members will be provided following the initial trial of the common questions and the Applicants' claims.*

~~147.145.~~ By reason of the matters pleaded in paragraph 7.2 above, the AMP Licensees were the responsible licensees within the meaning of s 961P of the Corporations Act in relation to the contraventions of ss 961B(1) and 961J(1) by their respective AMP Authorised Representatives pleaded at paragraphs 132 and 138 above.

~~148-146.~~ By reason of the matters pleaded in paragraphs 144 to 145 above, the AMP Licensees are liable to compensate the Applicants and Group Members for such loss or damage, including profits resulting from the alleged contraventions that were made by the AMP Licensees and the AMP Authorised Representatives, pursuant to ss 961M(2) and (4) of the Corporations Act.

N ANTI-AVOIDANCE CONTRAVENTIONS

~~149-147.~~ The matters in this Section are pleaded further or in the alternative to Section M.

~~150-148.~~ Throughout the Relevant Period, AMP and the AMP Licensees were prohibited from entering into, beginning to carry out or carrying out a scheme or any part of a scheme:

~~150-148.1~~ for a non-incidental purpose of avoiding the application of any provision of Part 7.7A of the Corporations Act; if

~~150-2148.2~~ the scheme has achieved, or would achieve, that purpose,

(the **Anti-Avoidance Provision**).

Particulars

Section 965(1) of the Corporations Act.

~~151-149.~~ After 1 July 2013, AMP and the AMP Licensees expected Commissions payable on products other than insurance products (**Non-Insurance Product Commissions**) to the AMP Authorised Representatives to cease when a client or a book of clients transitioned from one AMP Authorised Representative to another AMP Authorised Representative with a different AFSL or from one AMP Authorised Representative's AFSL to another.

Particulars

- i. *Transcript of the Banking Royal Commission on 17 April 2018, at 1137-1140.*
- ii. *AMP Practice Proposition Steering Committee dated 24 May 2013.*

~~152-150.~~ After 1 July 2013, and during the Relevant Period, the AMP Licensees and wholly owned subsidiaries of AMP received substantial amounts of Non-Insurance Product Commissions.

Particulars

Transcript of the Banking Royal Commission on 17 April 2018, at 1138.

~~153.~~151._____ For the reasons given at paragraphs 45 to 47 above, Commissions are conflicted remuneration within the meaning of Division 4 of Part 7.7A of the Corporations Act.

~~154.~~152._____ From 1 July 2013, the AMP Licensees and the AMP Authorised Representatives were banned from receiving conflicted remuneration.

Particulars

Sections 963E(1) and 963G(1) of the Corporations Act.

~~155.~~153._____ On or around May or June 2013, the AMP Licensees and AMP entered into, began to carry out or carried out a restructure or part of a restructure with the non-incidental purpose that Non-Insurance Product Commissions could continue to be paid after 1 July 2013 (the **Scheme**).

~~156.~~154._____ The Scheme was effected by the AMP Licensees and AMP restructuring its business by establishing the "Register Co" which held the AMP Licensees and AMP Authorised Representatives register (or book) of clients in a central pool so that they could be transitioned between AMP AFSL holders in order to maintain Financial Product Commissions.

Particulars

- i. Banking Royal Commission, 17 April Transcript at 1137 to 1140.*
- ii. AMP Practice Proposition Steering Committee dated 24 May 2013.*

~~157.~~155._____ In the premise of paragraph 153, the non-incidental purpose of the Scheme was to avoid the ban on conflicted remuneration contained in Division 4 of Part 7.7A of the Corporations Act.

~~158.~~156._____ In the premise of paragraphs 148 to 149, the Scheme has achieved that purpose.

~~159.~~157._____ In the premise of paragraphs 147 to 156, AMP and the AMP Licensees have breached s_965(1) of the Corporations Act.

~~160.~~158._____ The Applicants and Group Members each suffered loss or damage as a result of the contraventions pleaded at paragraph 157 above.

Particulars

- i. The Applicants and Group Members paid the Commissions, or alternatively the Respondents received and earnt profit on the Commissions.*

- ii. *Particulars relating to claims of Group Members will be provided following the initial trial of the common questions and the Applicants' claims.*

~~461.~~159. In the premise of paragraph 158, the Applicants and Group Members are entitled to compensation.

Particulars

Sections 1317E(1) and 1317HA(1) of the Corporations Act.

O FIDUCIARY OBLIGATIONS AND BREACH

~~462.~~160. The matters in this Section and Section P below are pleaded further or in the alternative to Sections M and N.

~~463.~~161. By reason of the matters pleaded in paragraphs 7.3, 55, 56 and 61.2 above, at all material times the AMP Licensees owed to the Applicants and Group Members a fiduciary duty to:

~~463.1~~161.1 avoid the real or substantial possibility of conflicts between the interests of the Applicants and Group Members, on the one hand, and the AMP Licensees' own interests and the interests of the AMP Authorised Representatives (and, if applicable, their Practices) on the other;

~~463.2~~161.2 not improperly use its position to gain an advantage for itself or the AMP Authorised Representatives (or their Practices).

Particulars

- i. *The particulars to paragraphs 55 and 57 are repeated.*
- ii. *The AMP Authorised Representatives were held out by the AMP Licensees, and further or in the alternative were authorised by the AMP Licensees, as having expertise in providing financial advice in relation to the Commissioned Products.*
- iii. *The AMP Licensees, and further the AMP Authorised Representatives acting as their agents, were able to control the flow of relevant information to the Applicants and Group Members in relation to the Commissioned Products.*

- iii. *The Applicants and Group Members were dependent upon the financial advice given to them by AMP Authorised Representatives, on behalf of the AMP Licensees, in relation to the Commissioned Products.*
- iv. *Further particulars relating to the claims of Group Members will be provided following the initial trial of the common questions and the Applicants' claims.*

~~164.1~~162. Further or in the alternative to paragraph 161 above, by reason of the matters pleaded in paragraphs 7.3, 61.2, and 63 to 65 above, at all material times the AMP Licensees owed to the First Applicant and Stack Sub-Group Members a fiduciary duty to:

~~164.1~~162.1 avoid the real or substantial possibility of conflicts between the interests of the First Applicant and Stack Sub-Group Members, on the one hand, and the AMP Licensees' own interests and the interests of the AMP Authorised Representatives and/or AMP Life on the other; and/or

~~164.2~~162.2 not improperly use its position to gain an advantage for itself, the AMP Authorised Representatives and/or AMP Life.

Particulars

- i. *Particulars to paragraphs 63 to 65 above are repeated.*
- ii. *The AMP Authorised Representatives were held out by the AMP Licensees, and further or in the alternative were authorised by the AMP Licensees, as having expertise in providing financial advice on insurance and the premiums payable on insurance.*
- iii. *The AMP Licensees, and further the AMP Authorised Representatives acting as their agents, were able to control the flow of relevant information to each of the First Applicant and Stack Sub-Group Members in relation to insurance and the premiums payable on that insurance.*
- iv. *The First Applicant and each of the Stack Sub-Group Members were dependent upon the financial advice given to them by AMP Authorised Representatives, on behalf of the AMP Licensees, in deciding what policies of insurance they should obtain and the amount of*

the premiums that should be paid on those policies.

- v. *Further particulars relating to the claims of Stack Sub-Group Members will be provided following the initial trial of the common questions and the Applicants' claims.*

~~165.~~163. At all material times, there was an actual conflict between the interests of the Applicants and Group Members, on the one hand, and AMP Licensees' interests and the interests of the AMP Authorised Representatives (and their Practices) on the other.

Particulars

The particulars to paragraph 127 above are repeated.

~~166.~~164. Further or in the alternative to paragraph 163 above, at all material times, there was a conflict between the interests of the First Applicant and Stack Sub-Group Members on the one hand, and the AMP ~~Authorised Representatives~~ Licensees' own interests and the interests of the AMP ~~Licensees~~ Authorised Representatives (and their Practices) and/or AMP Life on the other.

Particulars

The particulars to paragraph 128 are repeated.

~~167.~~165. During the Relevant Period, the AMP Licensees breached their fiduciary duties owed to the Applicants and the Group Members by:

~~167.1~~165.1 failing to avoid the conflicts referred to in paragraph 163 above; and/or

Particulars

The matters in paragraphs 135 to 137 are repeated.

~~167.2~~165.2 improperly using their position to gain a benefit for themselves and the AMP Authorised Representatives.

Particulars

- i. *The benefit to the AMP Licensees was the receipt of the Commissions.*
- ii. *The benefit to the AMP Authorised Representatives (and, if applicable, their Practices) was the (by them or their Practices) receipt of the Commissions and Incentives.*

~~168.~~166. Further or in the alternative to paragraph 165 above, the AMP Licensees breached their fiduciary duties owed to the First Applicant and the Stack Sub-Group Members by:

~~468-1~~166.1 failing to avoid the conflicts referred to in paragraph 164 above; and/or

Particulars

The matters in paragraphs 135 to 137 are repeated.

~~468-2~~166.2 improperly using their position to gain a benefit for themselves, the AMP Authorised Representatives and/or AMP Life.

Particulars

- i. *The benefit to the AMP Licensees was the receipt of the Commissions and Incentives.*
- ii. *The benefit to the AMP Authorised Representatives (and, if applicable, their Practices) was the (by them or their Practices) ~~was the~~ receipt of the Commissions and Incentives.*
- iii. *The benefit to AMP Life was the receipt of the premiums charged on the AMP Life Products, which included the Excess Premiums.*

~~469-1~~167. Further or in the alternative to paragraphs 161 and 166, by reason of the matters pleaded in paragraphs 7.3, 55, 56 and 61.2 above, at all material times the AMP Authorised Representatives owed to the Applicants and Group Members a fiduciary duty to:

~~469-1~~167.1 avoid the real or substantial possibility of conflicts between the interests of the Applicants and Group Members, on the one hand, and the AMP Authorised Representatives' own interests and the interests of their Practices, the AMP Licensees on the other; and/or

~~469-2~~167.2 not improperly use its position to gain an advantage for themselves or the AMP Licensees.

Particulars

The particulars to paragraphs 55, 57 and 161.2 are repeated.

~~470-1~~168. Further or in the alternative to paragraph 167 above, by reason of the matters pleaded in paragraphs 7.3, 61.2, and 63 to 65 above, at all material times the AMP Authorised Representatives owed to the First Applicant and the Stack Sub-Group Members a fiduciary duty to:

~~470-1~~168.1 avoid the real or substantial possibility of conflicts between the interests of the First Applicant and Stack Sub-Group Members, on the one hand, and the AMP

Authorised Representatives' own interests and the interests of their Practices, the AMP Licensees and/or AMP Life on the other; and/or

~~470.2~~168.2 not improperly use its position to gain an advantage for itself, the AMP Authorised Representatives and/or AMP Life.

Particulars

Particulars to paragraphs 63 to 65 and 162 above are repeated.

~~471.1~~169. During the Relevant Period, the AMP Authorised Representatives breached their fiduciary duty owed to the Applicants and Group Members by:

~~471.1~~169.1 failing to avoid the conflicts referred to in paragraph 163 above; and/or

Particulars

The matters in paragraphs 135 to 137 are repeated.

~~471.2~~169.2 improperly using their position to gain a benefit for themselves, their Practices, the AMP Licensees and/or AMP Life.

Particulars

The particulars at paragraph 165.2 above are repeated.

~~472.1~~170. Further or in the alternative to paragraph 169 above, the AMP Authorised Representatives breached their fiduciary duties owed to the First Applicant and Stack Sub-Group Members by:

~~472.1~~170.1 failing to avoid the conflicts referred to in paragraph 164 above; and/or

Particulars

The matters in paragraphs 135 to 137 are repeated.

~~472.2~~170.2 improperly using their position to gain a benefit for themselves, their Practices, the AMP Authorised Representatives and/or AMP Life.

Particulars

The particulars to paragraph 166.2 are repeated.

~~473.1~~171. By reason of the matters pleaded in paragraphs 108 to 111 above, the AMP Licensees are responsible for the conduct of their respective AMP Authorised Representatives alleged at paragraphs 169 and 170 above and for any loss or damage suffered by the Applicants and Group Members as a result.

~~174.~~172. In the premises, the AMP Licensees are liable to account for and pay to the Applicants and Group Members all benefits, profits and gains made or derived by the AMP Authorised Representatives (and/or their Practices), the AMP Licensees and AMP Life by reason of the breaches of fiduciary duty by the AMP Licensees and/or their AMP Authorised Representatives.

Particulars

The particulars at paragraph 166.1 and 166.2 above are repeated.

~~175.~~173. Further or in the alternative, the Applicants and each of the Group Members suffered loss or damage by reason of the breaches of fiduciary duty by the AMP Licensees and/or their AMP Authorised Representatives.

Particulars

The particulars at paragraph 144 are repeated.

~~176.~~174. Pursuant to s 917E(1) of the Corporations Act, the AMP Licensees are liable to pay equitable compensation to each of the Applicants and Group Members for such loss or damage.

P KNOWING RECEIPT BY AMP LIFE

~~177.~~175. At the time that AMP Life received the Excess Premiums, it knew:

~~177.1~~175.1 the material facts giving rise to the existence of the fiduciary duties owed by the AMP Authorised Representatives and/or the AMP Licensees to the First Applicant and Stack Sub-Group Members as pleaded in paragraphs 162 and 168 above; and

Particulars

- i. *AMP Life's knowledge of those matters is to be inferred from AMP Life issuing the AMP Life Products to the First Applicant and Stack Sub-Group Members; its charging and receipt of the premiums on the AMP Life Products, including the Excess Premiums; and its payment of the AMP Life Commissions and AMP Life Incentives.*
- ii. *Further particulars may be provided following receipt of the Respondents' discovery.*

~~177.2~~175.2 the material facts giving rise to the breaches of those fiduciary duties by the AMP Authorised Representatives and/or the AMP Licensees as paragraphs 162 and 168 above.

Particulars

- i. The particulars to paragraph 175.1 above are repeated.*
- ii. Further particulars may be provided following receipt of the Respondents' discovery.*

~~178.~~176. Further or in the alternative to paragraph 175 above, at the time that AMP Life received the Excess Premiums, it knew of the circumstances that would have indicated to an honest and reasonable person the material facts referred to in paragraphs 175.1 and 175.2 above.

Particulars

The particulars at paragraphs 175.1 and 175.2 are repeated.

~~179.~~177. By reason of the matters pleaded in paragraphs 175 and 176 above, AMP Life is liable to account for and pay to the First Applicant and Stack Sub-Group Members all benefits, profits and gains made or derived by AMP Life from its receipt and use of the AMP Life Premiums paid by the First Applicant and Stack Sub-Group Members, including the Excess Premiums.

Particulars

AMP Life received, and made or derived profits from, the premiums paid on the First Applicant's and the Stack Sub-Group Members' AMP Life Products, including the Excess Premiums.

~~180.~~178. Further or in the alternative, each of the First Applicant and the Stack Sub-Group Members suffered loss or damage by reason of AMP Life knowingly receiving the Excess Premiums paid by the First Applicant and Stack Sub-Group Members, as a result of the breach of fiduciary duty by the AMP Licensees and/or AMP Authorised Representatives.

Particulars

The First Applicant and the Stack Sub-Group Members paid premiums, which included the Excess Premiums, on the AMP Life Products.

~~181.~~179. By reason of the matters pleaded in paragraphs 175, 176 and 178 above, AMP Life is liable to pay equitable compensation to the First Applicant and Stack Sub-Group Members for such loss or damage

Q OSF CONTRACTUAL BREACH

~~182.~~180. The matters in this Section are pleaded further or in the alternative to Sections M to P.

~~183.~~181. Pursuant to the terms of the AMP Ongoing Service Package, during the Relevant Period:

~~183.1~~181.1 the AMP Authorised Representatives were obliged to provide ongoing personal advice to the Second and Fourth Applicants and the OSF Sub-Group Members;

~~183.2~~181.2 any ongoing personal advice was required to comply with ss 961B and 961J of the Corporations Act; and

~~183.3~~181.3 further to paragraph 181.1, the AMP Authorised Representatives were obliged to provide to the Second and Fourth Applicants and the OSF Sub-Group Members the other services alleged at paragraph 71 as part of the AMP Ongoing Service Package.

Particulars

The particulars in paragraph 76 are repeated.

~~184.~~182. During the Relevant Period, in breach of the AMP Ongoing Service Package:

~~184.1~~182.1 the AMP Authorised Representatives did not provide ongoing personal advice to the Second and Fourth Applicants and the OSF Sub-Group Members in accordance with the terms of the AMP Ongoing Service Package;

~~184.2~~182.2 further or in the alternative to paragraph 182.1, to the extent that the AMP Authorised Representatives did provide personal advice to the Second and Fourth Applicants and the OSF Sub-Group Members during the Relevant Period, that advice did not comply with ss 961B and 961J of the Corporations Act; and

Particulars

The matters in paragraphs 132 and 138 are repeated.

~~184.3~~182.3 the AMP Authorised Representatives did not provide the other services to be provided as part of the AMP Ongoing Service Package, alleged at paragraph 71 above, to the Second and Fourth Applicants and the OSF Sub-Group Members.

~~185.~~183. By reason of the matters pleaded in paragraphs 108 to 111 above, the AMP Licensees are responsible for the conduct of their respective AMP Authorised Representatives alleged at paragraphs 182 above and for any loss or damage suffered by the Applicants and Group Members as a result.

~~186.~~184. By reason of the breaches alleged in paragraph 182 above, the Second and Fourth Applicants and the OSF Sub-Group Members have suffered loss or damage.

Particulars

- i. The amount of the OSFs charged to the Second and Fourth Applicants and the OSF Group Members.*
- ii. The Commissions paid in respect of the Second and Fourth Applicants and the OSF Group Members' Commissioned Products.*

~~187.~~185. Pursuant to s 917E(1) of the Corporations Act, the AMP Licensees are liable to pay damages to the Second and Fourth Applicants and the OSF Sub-Group Members for such loss or damage.

R UNCONSCIONABLE CONDUCT

~~188.~~186. The matters in this Section are pleaded further or in the alternative to Sections M to Q.

~~189.~~187. If the AMP Authorised Representatives had provided the ongoing personal advice referred to in paragraph 181.1 above then by reason of the matters pleaded in paragraphs 71 to 76 the AMP Authorised Representatives would have been:

~~189.1~~187.1 contractually required to give personal advice;

~~189.2~~187.2 subject to the obligations referred to in paragraph 126 and 134 above; and

~~189.3~~187.3 required, in compliance with those obligations, to recommend products that did not have the Commissions, or otherwise required, in compliance with those obligations, to rebate those Commissions as part of giving that advice.

~~190.~~188. The Commissions could reasonably be expected to influence AMP Authorised Representatives not to provide ongoing personal advice, because that advice would have led to the termination of the Commissions.

~~191.~~189._____ The Commissions could reasonably be expected to influence AMP Licensees not to properly supervise whether the AMP Authorised Representatives were providing ongoing advice, because that advice would have led to the termination of the Commissions.

~~192.~~190._____ By contractually promising to provide to the Second and Fourth Applicants and the OSF Sub-Group Members the ongoing personal advice pleaded in paragraphs 73 and 181.1 above, the AMP Authorised Representatives were engaging in conduct in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act.

~~193.~~191._____ The conduct in paragraph 190 was in trade or commerce within the meaning of s 12BA(1) of the ASIC Act.

~~194.~~192._____ The AMP Licensees, through their AMP Authorised Representatives were suppliers of those services within the meaning of s 12BD of the ASIC Act.

~~195.~~193._____ By reason of the matters pleaded in paragraphs 186 to 191 above, during the Relevant Period each of the AMP Authorised Representatives were prohibited by s 12CB(1) of the ASIC Act from engaging in conduct in connection with the possible supply of financial services to the Second and Fourth Applicants and the OSF Sub-Group Members that was, in all the circumstances, unconscionable.

~~196.~~194._____ During the Relevant Period, the circumstances attendant upon the potential supply of the financial services pleaded in paragraph 190 above included:

~~196.1~~194.1_____ the Second and Fourth Applicants and OSF Sub-Group Members were in a position of special disadvantage with AMP Licensees;

Particulars

- i. AMP Licensees held out its financial advisers as having expertise in providing financial product advice in relation to Commissioned Products and Commissions.*
- ii. AMP Licensees controlled the flow of information to clients of financial advisers in AMP Licensees in relation to Commissioned Products and Commissions.*
- iii. The Second and Fourth Applicants and OSF Sub-Group Members were dependent on the financial product advice given by AMP*

Authorised Representatives in relation to Commissioned Products and Commissions.

- iv. *The Second and Fourth Applicants and OSF Sub-Group Members had no ability, by reason of inequality of bargaining power, to negotiate with the AMP Licensees in relation to payment of the Commissions.*

~~496.2~~194.2 each of the AMP Licensees and the AMP Authorised Representatives were pursuing, receiving or not rebating Commissions;

~~496.3~~194.3 the Commissions could reasonably be expected to influence the personal advice given to the Second and Fourth Applicants and the OSF Sub-Group Members and whether to give personal advice to the Second and Fourth Applicants and the OSF Sub-Group Members;

~~496.4~~194.4 no additional benefits or services would be received by the Second or Fourth Applicants or the OSF Sub-Group Members in return for the continuation of the Commissions; and

~~496.5~~194.5 it was in the financial interests of the Second and Fourth Applicants and the OSF Sub-Group Members for the Commission payments to cease.

~~497.~~195. In the premise of paragraph 194, the AMP Licensees continued to receive Commissions because AMP Authorised Representatives did not discharge their obligation to provide ongoing personal advice to the Second and Fourth Applicants and the OSF Sub-Group Members, which conduct breached the obligation in paragraph 193 above.

~~498.~~196. In the premise of paragraph 195, by continuing to receive Commissions in circumstances where the AMP Authorised Representatives did not discharge their obligation to provide ongoing personal advice, the AMP Licensees engaged in conduct that was, in all the circumstances, unconscionable.

~~499.~~197. The Second and Fourth Applicants and Group OSF Sub-Group Members each suffered loss or damage as a result of the contraventions pleaded at paragraphs 195 to 196 above.

Particulars

The Second and Fourth Applicants and OSF Sub-Group Members paid the OSFs and the Commissions;

~~200.~~198. In the premise of paragraph 197 and 198, the Second and Fourth Applicants and the OSF Sub-Group Members are entitled to compensation.

Particulars

Section 12GF(1) of the ASIC Act.

~~201.~~199. By reason of the matters pleaded in paragraph 108 to 111 above, the AMP Licensees are responsible for the conduct of their respective AMP Authorised Representatives alleged at paragraphs 187 to 196 above and for any loss or damage suffered by the Second and Fourth Applicants and OSF Sub-Group Members as alleged at paragraph 197.

S MISLEADING OR DECEPTIVE CONDUCT

~~202.~~200. The matters in this Section are pleaded further or in the alternative to Sections M to R.

~~203.~~201. Throughout the Relevant Period, the AMP Licensees by themselves or through AMP Authorised Representatives represented to the Applicants and some or all of the Group Members that:

~~203.1~~201.1 OSFs paid to the AMP Licensees and the AMP Authorised Representatives were paid in exchange for ongoing personal advice;

Particulars

The matters in paragraphs 71 and 76 above are repeated.

~~203.2~~201.2 the AMP Licensees:

- (a) had adequate systems and processes in place to address and manage the risks in their advice business generated by the Commissions and Incentives and the conflicts associated with the Commissions and Incentives;
- (b) had adequate systems and processes in place to address and manage the risks in their advice business generated by the AMP Life Commissions, AMP Life Incentives, Buy-Back Incentives, One-Off Approval Requirement, and the Third Party Insurance in Super Requirements, and the conflicts associated with those matters;
- (c) had taken reasonable steps to ensure that the AMP Authorised Representatives complied with their obligations to act in the best interests of clients in relation to personal advice;

- (d) had taken reasonable steps to ensure that the AMP Authorised Representatives complied with their obligations to prioritise the interests of clients over their own interests when giving personal advice;
- (e) had done all things necessary to ensure that the financial services provided to the Applicants and Group Members were provided efficiently, honestly and fairly; and
- (f) had adequate systems and processes in place to ensure ongoing services were provided;

~~203.3~~201.3 the AMP Licensees by themselves or through the AMP Authorised Representatives would inform the Applicants and some or all of the Group Members of circumstances that would make it inappropriate for the AMP Authorised Representatives to continue to charge and receive the OSFs and Commissions,

(collectively, on their own, or in any combination, the **Commissions Representations**).

Particulars

- i. *The representations in paragraph 201.1 were implied and contained in the terms of the AMP Ongoing Service Package and by reason of the payment of OSFs in consideration for the AMP Ongoing Service Package.*
- ii. *The representations in paragraphs 201.2 and 201.3 were implied and/or conveyed by silence as a reasonable person in the position of the Applicants and each other Group Member would, in the circumstances of the:*
 - a. *giving of personal advice; and*
 - b. *receipt of OSFs and Commissions; and*
 - c. *reasonably have expected the AMP Licensees and/or the AMP Authorised Representatives to disclose the matters the subject of the representation.*
- iii. *Further, or in the alternative, the representations in paragraphs 201.2 and 201.3 implied from the circumstances referred to above and the Product Disclosure Statements and Financial Services Guides for the Commissioned Products.*

~~204.202.~~ Each of the Commissions Representations was:

~~204.1~~202.1 made in relation to a financial product;

~~204.2~~202.2 made in trade or commerce; and

~~204.3~~202.3 a continuing representation, from the date of the first advice to each Applicant and Group Member and lasting for the duration in which OSFs and Commissions were payable by the Applicant and Group Member.

~~205.~~203. Further or in the alternative to paragraph 200, during the Relevant Period, the AMP Licensees by themselves or through AMP Authorised Representatives represented to the First Applicant and Stack Sub-Group Members that there was no substantially equivalent or better policies of insurance available from a third party insurer for a lower premium than the AMP Life Product recommended by the AMP Authorised Representatives (the **Premiums Representations**, and together with the Commissions Representations, collectively, on their own, or in any combination, the **Representations**).

Particulars

The matters in paragraphs 64 and 68 are repeated.

~~206.~~204. Each of the Premium Representations was:

~~206.1~~204.1 made in relation to a financial product;

~~206.2~~204.2 made in trade or commerce; and

~~206.3~~204.3 a continuing representation, from the date that the AMP Authorised Representative made the recommendation (alleged at paragraph 64 above) that the First Applicant and Stack Sub-Group Members acquire, renew or continue to hold one or more AMP Life Products, continuing until such time as the AMP Authorised Representatives withdrew that recommendation or otherwise advised the First or Second Applicant or Stack Sub-Group Member that there was substantially equivalent or better policies of insurance available from a third party insurer for a lower premium than the AMP Life Product recommended by the AMP Authorised Representative.

~~207.~~205. By making the Representations and each of them, the AMP Licensees engaged in conduct:

~~207.1~~205.1 in trade or commerce within the meaning of s 12BA(1) of the ASIC Act;

~~207.2~~205.2 in trade or commerce within the meaning of s18 of the Australian Consumer Law (**ACL**);

~~207.3~~205.3 in relation to a financial service within the meaning of:

- (a) s 12BAB(1) of the ASIC Act; further or alternatively
- (b) s 766A(1) of the Corporations Act; and

~~207.4~~205.4 in relation to a financial product within the meaning of s76A(1) of the Corporations Act.

~~208.206.~~ The Representations and each of them were misleading, in that:

~~208.1~~206.1 the ongoing personal advice was not provided to the Second and Fourth Applicants and the OSF Sub-Group Members;

Particulars

- i. Section 961L of the Corporations Act.*
- ii. Regan Statement at paragraphs [163] to [170].*
- iii. The May 2015 Breach Report appearing at tab 24 of Ex AGR-1 to the Regan Statement.*

~~208.2~~206.2 the AMP Licensees:

- (a) did not have adequate systems or processes in place to manage the risks in their advice business generated by the Commissions and Incentives and the conflicts associated with the Commissions and Incentives; ~~and~~
- (b) did not have adequate systems and processes in place to address and manage the risks in their advice business generated by the AMP Life Commissions, AMP Life Incentives, Buy-Back Incentives, One-Off Approval Requirement, and the Third Party Insurance in Super Requirements, and the conflicts associated with those matters;
- (c) had not taken reasonable steps to ensure that the AMP Authorised Representatives complied with their obligations to act in the best interests of clients in relation to personal advice;
- (d) had not taken reasonable steps to ensure that the AMP Authorised Representatives complied with their obligations and prioritised the interests of Group Members over their own interests when giving personal advice;

- (e) had not done all things necessary to ensure that the financial services provided to the Applicants and Group Members were provided efficiently, honestly and fairly;
- (f) did not have adequate systems or processes in place to ensure ongoing services were provided;

Particulars

The matters in paragraph 140 above are repeated.

- (g) had no reasonable grounds to make the representation in paragraph 201.2 above; and
- (h) did not adequately inform the Applicants and/or Group Members of the circumstances that made it inappropriate for the AMP Licensees to continue to charge and receive the OSFs and Commissions; and

Particulars

Each of the matters in sub-paragraph 206.2 made it inappropriate for the AMP Licensees to continue to charge and receive the OSFs and Commissions.

~~208.3~~206.3 at the time that the AMP Authorised Representatives recommended that the First Applicant and the Stack Sub-Group Members acquire, renew or continue to hold one or more AMP Life Products, there were substantially equivalent or better policies of insurance available from a third-party insurer for a lower premium than the AMP Life Products recommended by the AMP Authorised Representatives.

~~209.2~~207. By reason of the matters set out in paragraphs 200 to 206 above, by making the Representations and each of them, the AMP Licensees engaged in conduct in trade or commerce:

~~209.4~~207.1 that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18(1) of the ACL; further or alternatively

~~209.2~~207.2 in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 12DA(1) of the ASIC Act; further or alternatively

~~209.3~~207.3 in relation to a financial product or a financial service, that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H(1) of the Corporations Act.

~~210.208.~~ The Applicants and some or all of the Group Members each suffered loss or damage as a result of the contraventions pleaded in paragraph 207 above.

Particulars

- i. The Applicants and Group Members paid the OSFs and Commissions.*
- ii. Further or in the alternative, the First Applicant and Stack Sub-Group Members paid the Excess Premiums on the AMP Life Products acquired, renewed or continued to be held pursuant to the recommendations of the AMP Authorised Representatives.*
- iii. Particulars relating to claims of Group Members will be provided following the initial trial of the common questions and the Applicants' claims.*

~~211.209.~~ By reason of the matters alleged in paragraphs 201 to 208, the AMP Licensees are liable to compensate the Applicants and some or all of the Group Members for that loss or damage.

Particulars

Section 1041I(1) of the Corporations Act; s 12GF(1) of the ASIC Act; s 236(1) of the ACL.

AND THE APPLICANTS CLAIM, on their own behalf and on behalf of the Group Members, the relief set out in the accompanying Consolidated Originating Application.

DICTIONARY

90 Day Exception is defined at paragraph 84

ACL means the *Australian Consumer Law*

AFSL is defined at paragraph 5.2

AMP Authorised Representatives is defined at paragraph 6

AMP Conflict Policies is defined at paragraph 86.3

AMP Conflicts Register is defined at paragraph 92

AMP Licensees is defined at paragraph 5

AMP Life Commissions is defined at paragraph 42

AMP Life Distribution Agreements is defined at paragraph 42

AMP Life Incentives is defined at paragraph 49

AMP Life means the Fifth Respondent, AMP Life Limited (ACN 079 300 379)

AMP Life Premiums is defined at paragraph 66

AMP Life Products is defined at paragraph 39

AMP Mandatory Training is defined at paragraph 86.4

AMP means the Fourth Respondent, AMP Limited (ACN 079 354 519)

AMP Ongoing Service Package is defined at paragraph 71

AMP Policies is defined at paragraph 86.1

AMP QAF's is defined at paragraph 86.2

AMP Super Funds is defined at paragraph 105.3

AMP Trustees is defined at paragraph 105

AMPFP Authorised Representatives is defined at paragraph 6.1

AMPFP means the First Respondent, AMP Financial Planning Pty Limited

Anti-Avoidance Provision is defined at paragraph 148

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth)

ASL means AMP Superannuation Limited

ASL Super Funds is defined at paragraph 104.3

Banking Royal Commission means the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Benchmarking Guidelines is defined at paragraph 9959

BOLR means Buyer of Last Resort

Buy-Back Benefit is defined at paragraph 53

Buy-Back Option is defined at paragraph 52

Charter Authorised Representatives is defined at paragraph 6.2

Charter means the Second Respondent, Charter Financial Planning Limited

Commissioned Products is defined at paragraph 37

Commissions is defined at paragraph 41

Commissions Representations is defined at paragraph 201

Conflict of Interest QAF is defined at paragraph 88

Corporations Act means the *Corporations Act 2001* (Cth)

Distribution Agreements is defined at paragraph 41

DMA is defined at paragraph 49

Excess Premiums is defined at paragraph 67

Green Statement is defined at paragraph 86

Group Members is defined at paragraph 1

Hillross Authorised Representatives is defined at paragraph 6.3

Hillross means the Third Respondent, Hillross Financial Services Limited

Incentives is defined at paragraph 48

Insurance APLs is defined at paragraph 95

Johnson Statement means the witness statement of Mr Gregory Johnson dated 10 September 2018 to the Banking Royal Commission

Life Insurance Act means the *Life Insurance Act 1995* (Cth)

NMS means N M Superannuation Proprietary Limited

NMS Super Funds is defined at paragraph 105.3

Non-Insurance Product Commissions is defined at paragraph 149

One-Off Approval Requirement is defined at paragraph 98

OSF is defined at paragraph 73.4

OSF Sub-Group Members is defined at paragraph 3.2

Platform APLs is defined at paragraph 101

Practice is defined at paragraph 6A

Premiums Representations is defined at paragraph 203

Regan Statement is defined at paragraph 46

Relevant Period means period from 23 July 2014 until 15 February 2021 (inclusive)

Representations is defined at paragraph 203

Scheme is defined at paragraph 153

Second AMP Authorised Representative is defined at paragraph 46

Stack Sub-Group Members is defined at paragraph 3.1

Third Party Insurance in Super Requirements is defined at paragraph 106.2

TPD means total and permanent disablement

TSC means temporary salary continuance



Signed by Craig Allsopp
Jointly appointed lawyer for the Applicants

Signed by Simon Morris
Jointly appointed lawyer for the Applicants

This amended pleading was prepared by B O'Connor, E L Olivier and T L Bagley of counsel, and settled by A S Martin SC.

Certificate of lawyers

We, Craig Allsopp and Simon Morris, certify to the Court that, in relation to the amended ~~consolidated~~ statement of claim filed on behalf of the Applicants, the factual and legal material available to us at present provides a proper basis for each allegation in the pleading.

Date: _____ ~~2 March~~ 23 December 2021



Signed by Craig Allsopp
Jointly appointed lawyer for the Applicants



Signed by Simon Morris
Jointly appointed lawyer for the Applicants

Schedule

No. VID 489 of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

Nigel Peter Stack

First Applicant

Melita Anna Winterton

Second Applicant

John Leslie Brotton

Third Applicant

David James Brittain

Fourth Applicant

AMP Financial Planning Pty Limited (ACN 051 208 327)

First Respondent

Charter Financial Planning Limited (ACN 002 976 294)

Second Respondent

Hillross Financial Services Limited (ACN 003 323 055)

Third Respondent

AMP Limited (ACN 079 354 519)

Fourth Respondent

AMP LifeResolution Life Australasia Limited (ACN 079 300 379)

Fifth Respondent