

NOTICE OF FILING

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Details of Filing

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| Document Lodged: | Defence - Form 33 - Rule 16.32 |
| 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: 28/02/2022 11:28:42 AM AEDT

A handwritten signature in blue ink that reads "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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Defence to the Amended Statement of Claim

Filed pursuant to order 2 of the orders of Beach J made on 31 January 2022

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 Pty Limited (ACN 051 208 327) and others named in the Schedule

Respondents

Introduction

In this pleading, save as expressly and specifically dealt with below, the Respondents adopt the defined terms and headings used in the Amended Consolidated Statement of Claim filed by the Applicants on 24 December 2021 (Claim) for convenience only and without conveying any admission of their content.

A NATURE OF THE PROCEEDINGS

1. In answer to the allegations in paragraph 1 of the Claim, the Respondents:

- 1.1 admit that the Applicants purport to bring the proceeding on behalf of those persons identified in the paragraph;

Filed on behalf of AMP Financial Planning Pty Limited (ACN 051 208 327), Charter Financial Planning Limited (ACN 002 976 294), Hillross Financial Services Limited (ACN 003 323 055), AMP Limited (ACN 079 354 519) and AMP Life Limited (ACN 079 300 379), the Respondents.

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- 1.2 deny that the persons on behalf of which the Applicants purport to bring the proceeding (by themselves or through their superannuation funds as members) suffered loss or damage or are entitled to claim an account of profits;
- 1.3 say that any cause of action by an Applicant or a purported Group Member is time barred to the extent that it accrued more than six years prior to the date on which this proceeding was commenced;

Particulars

- A. Sections 961M(6) and 1041I(2) of the Corporations Act;
 - B. Section 12GF(2) or 12GM(5) of the ASIC Act;
 - C. Section 237(3) of the ACL;
 - D. Any applicable limitation period in relation to the Claims for breach of contract and actions for account of profits of the Applicants or the Group Members, namely:
 - i. sections 11(1) and 12 of the Limitation Act 1985 (ACT);
 - ii. sections 14(1)(a) and 15 of the Limitation Act 1969 (NSW);
 - iii. sections 12(1) and 13 of the Limitation Act 1981 (QLD);
 - iv. sections 4(1)(a) and 4(2) of the Limitation Act 1974 (TAS);
 - v. sections 5(1) and 5(2) of the Limitation of Actions Act 1958 (VIC);
 - vi. sections 13 and 26 of the Limitation Act 2005 (WA).
 - E. Those limitation periods referred to above applied by analogy to the equitable Claims set out in this Defence and/or by reason of the doctrine of laches.
- 1.4 otherwise do not know and therefore do not admit ~~plead to~~ the allegations in the paragraph ~~as they make no allegation of law or fact against them.~~
2. In answer to the allegations in paragraph 2 of the Claim, the Respondents:
- 2.1 refer to and repeat paragraph 1 above;
 - 2.2 do not know and do not admit the allegations in the paragraph.
3. In answer to paragraph 3 of the Claim, The Respondents:
- 3.1 refer to and repeat paragraph 1 above;

3.2 otherwise do not know and therefore do not admit the allegations in the paragraph do not plead to the allegations in paragraph 3 of the Claim as it contains no allegations against them.

4. The Respondents do not plead to the allegations in paragraph 4 of the Claim as it contains no allegations against them.

B THE RESPONDENTS

5. The Respondents admit the allegations in paragraph 5 of the Claim and say further that:

5.1 during the Relevant Period certain of the Fourth Respondent's wholly owned subsidiaries which held AFSLs carried on a financial advice and wealth management business, which subsidiaries included:

5.1.1 AMPFP;

5.1.2 Charter; and

5.1.3 Hillross,

(together, the **AMP Licensees**);

5.2 in respect of paragraph 5.3, the term "AMP Group" is not defined in the Claim, but say that the Fourth Respondent was the parent company of a group of companies which included, at all material times, the AMP Licensees.

6. The Respondents admit the allegations in paragraph 6 of the Claim.

6A. In answer to the allegations in paragraph 6A of the Claim, the Respondents:

6A.1 refer to the definition of "Practices" in paragraph 7.2.1 below; and

6A.2 otherwise admit the allegations in the paragraph.

7. In answer to the allegations in paragraph 7 of the Claim, the Respondents:

7.1 admit the allegations in paragraphs 7.1 and 7.2;

7.2 say that during the Relevant Period, pursuant to the terms of various agreements between AMP Authorised Representatives and AMP Licensees (**Authorised Representative Agreements**), AMP Licensees:

- 7.2.1 allowed certain financial practices, whether sole traders, partnerships, trusts or corporate entities (**Practices**), to carry on the business of providing financial services to clients under the AMP Licensees' trade mark and the AMP Licensees' AFSL;
- 7.2.2 appointed as "Authorised Representatives" of AMP Licensees (as defined in section 916A of the Corporations Act):
 - a. Practices; and/or
 - b. individuals from Practices, subject to the individual and the Practice entering into an Authorised Representative Agreement with the AMP Licensee;
- 7.2.3 had a relationship with Practices, and AMP Authorised Representatives, whereby the Practices and AMP Authorised Representatives were not partners or employees of the AMP Licensees;
- 7.3 say that the AMP Authorised Representatives operated throughout Australia and the majority of them operated from premises not owned by, and through businesses not owned by, AMP Licensees or any of their related entities or associates;
- 7.4 in respect of the allegations in paragraph 7.3 of the Claim, admit that:
 - 7.4.1 where an AMP Authorised Representative engaged in conduct during the Relevant Period:
 - a. that related to the provision of a financial service within the meaning of s 917A(1)(a) of the Corporations Act;
 - b. on which the client could reasonably be expected to rely and relied in good faith within the meaning of s 917A(1)(b) and (c) of the Corporations Act,

the AMP Licensee for that AMP Authorised Representative was responsible, as between the AMP Licensee and the client, for the conduct of the AMP Authorised Representative by reason of s 917B of the Corporations Act;
 - 7.4.2 if an AMP Licensee was responsible for the conduct of an AMP Authorised Representative during the Relevant Period, under Div 6 of Pt

7.6 of the Corporations Act the AMP Licensee was liable to the client in respect of any loss or damage suffered by the client as a result of the AMP Authorised Representative's conduct by reason of s 917E of the Corporations Act;

7.5 otherwise deny the allegations in the paragraph.

8. In answer to the allegations in paragraph 8 of the Claim, the Respondents:

8.1 admit the allegations in paragraphs 8.1, 8.3 and 8.4;

8.2 say that in respect of paragraph 8.2, the term "AMP Group" is not defined in the Claim, but say that AMP was the parent company of a group of companies which included:

8.2.1 at all material times, the AMP Licensees;

8.2.2 up to 30 June 2020, AMP Life.

9. The Respondents admit ~~In answer to the allegations in paragraph 9 of the Claim, the Respondents:~~

~~9.1 admit the allegations made in paragraphs 9.1, 9.2, 9.4 and 9.5;~~

~~9.2 in respect of the allegation made in paragraph 9.3, say that up to 30 June 2020, AMP Life was an associate of each of the AMP Licensees within the meaning of section 11(b) of the Corporations Act;~~

~~9.3 otherwise deny the allegations in the paragraph.~~

C THE APPLICANTS

C.1 The First Applicant

10. In answer to the allegations in paragraph 10 of the Claim, the Respondents:

10.1 admit that on or around 13 July 2012, the First Applicant received personal advice from Noel Lang of U-First Financial Solutions Pty Ltd to consolidate superannuation funds into an "AMP Flexible Super – Super" account to which insurance cover could be added in the form of the "Flexible Protection" option;

10.2 say that the advice provided by Mr Lang was recorded in a Statement of Advice dated 13 July 2012 (**2012 Stack SOA**);

- 10.3 say that the advice provided by Mr Lang to the First Applicant was given before the introduction and application of:
- 10.3.1 the statutory obligations under sections 961B(1) and 961J of the Corporations Act; and
- 10.3.2 the prohibition on conflicted remuneration under sections 963E-963L of the Corporations Act;
- 10.4 otherwise deny the allegations in the paragraph.
11. In answer to the allegations in paragraph 11 of the Claim, the Respondents:
- 11.1 say that on 25 July 2012 the First Applicant applied for the superannuation product called "AMP Flexible Super" and "Flexible Protection" insurance within that product;
- 11.2 say that AMP Flexible Super – Flexible Protection was not a separate product acquired by the First Applicant but rather was added on 7 August 2012 to the First Applicant's AMP Flexible Super – Super account;
- 11.3 say that the First Applicant held AMP Flexible Super – Flexible Protection from 7 August 2012 to 3 January 2019;
- 11.4 otherwise do not know and do not admit the allegations in the paragraph.
12. The Respondents admit the allegations in paragraph 12 of the Claim and:
- 12.1 refer to and repeat paragraph 11 above and paragraph 39 below; and
- 12.2 say that as a Commissioned Product (as defined in paragraph 37 of the Claim), the commissions payable in respect of the AMP Flexible Super product held by the First Applicant became grandfathered on and from 1 July 2013.
13. The Respondents admit the allegations in paragraph 13 of the Claim and:
- 13.1 refer to and repeat paragraph 11 above;
- 13.2 say that the First Applicant received personal advice from Mr Lang on or around 18 December 2015 which included a recommendation that the First Applicant renew and continue to hold AMP Flexible Super – Flexible Protection;

- 13.3 say that the advice provided by Mr Lang was recorded in a Statement of Advice dated 18 December 2015 (**2015 Stack SOA**).
14. In answer to the allegations in paragraph 14 of the Claim, the Respondents:
- 14.1 say that on or around 23 December 2015 the First Applicant applied to reduce the level of Flexible Protection "Death Cover" and "Total and Permanent Disablement Cover" in his AMP Flexible Super – Super account;
- 14.2 say that on or around 6 December 2018 Mr Lang prepared a Statement of Advice for the First Applicant recommending, amongst other things, that the First Applicant transfer his superannuation from AMP Flexible Super – Super to another product and cancel the Flexible Protection insurance coverage held through this account;
- 14.3 say that on or around 3 January 2019 the First Applicant's AMP Flexible Super – Super account was closed and his Flexible Protection insurance coverage ceased;
- 14.4 otherwise do not know and do not admit the allegations in the paragraph.
15. In answer to the allegations in paragraph 15 of the Claim, the Respondents:
- 15.1 refer to and repeat paragraphs 11 above and 41 to 43 below;
- 15.2 say that Commissions were paid with respect to AMP Flexible Super – Flexible Protection during the Relevant Period up to around 3 January 2019;
- 15.3 otherwise deny the allegations made in the paragraph.
16. In answer to the allegations in paragraph 16 of the Claim, the Respondents:
- 16.1 say that in the Relevant Period up to 3 January 2019 AMP Life charged and received premiums on AMP Flexible Super – Flexible Protection which were paid from the AMP Retirement Trust, a superannuation fund of which AMP Flexible Super was a part;
- 16.2 otherwise deny the allegations in the paragraph.

C.2 The Second Applicant

17. The Respondents admit the allegations in paragraph 17 of the Claim and say further that the "Flexible Lifetime – Protection Plan" product was acquired by the Second Applicant and another individual.

18. The Respondents admit the allegations in paragraph 18 of the Claim and say further that, as a Commissioned Product, the commissions payable in respect of the Flexible Lifetime – Protection Plan product held by the Second Applicant became grandfathered on and from 1 July 2013.
19. The Respondents admit the allegations in paragraph 19 of the Claim and say further that:
 - 19.1 on or around 29 July 2014 the Second Applicant received personal advice from Jason Spears of Bayside Financial Planners Pty Ltd to roll over superannuation funds into an “AMP Flexible Super – Super” account to which existing life insurance cover could be transferred;
 - 19.2 the advice provided by Mr Spears was recorded in a Statement of Advice dated 29 July 2014 (**2014 Winterton SOA**).
20. In answer to the allegations in paragraph 20 of the Claim, the Respondents:
 - 20.1 say that on or around 27 August 2014, the Second Applicant acquired a superannuation product called “AMP Flexible Super – Super”;
 - 20.2 say that on or around 3 September 2014, “Flexible Protection” insurance cover was added to the Second Applicant’s AMP Flexible Super – Super account;
 - 20.3 say that AMP Flexible Super – Flexible Protection was not a separate product acquired by the Second Applicant but rather was added on 3 September 2014 to the Second Applicant’s AMP Flexible Super – Super account;
 - 20.4 otherwise do not know and do not admit the allegations in the paragraph.
21. The Respondents admit the allegations in paragraph 21 of the Claim and:
 - 21.1 refer to and repeat paragraph 12 above; and
 - 21.2 say that, as a Commissioned Product, the commissions payable in respect of the AMP Flexible Super product held by the Second Applicant became grandfathered on and from 1 July 2013.
22. In answer to the allegations in paragraph 22 of the Claim, the Respondents:
 - 22.1 refer to and repeat paragraphs 41 to 43 below;
 - 22.2 in relation to paragraph 22.1, say that Commissions (as described in paragraph 41 below) were paid in respect of the Flexible Lifetime – Protection Plan product

during the Relevant Period up to around 2 September 2014 when the product was cancelled by the Second Applicant;

22.3 in relation to paragraph 22.2, say that Commissions (as described in paragraph 41 below) were paid in respect of AMP Flexible Super – Flexible Protection during the Relevant Period up to around 5 November 2019;

22.4 otherwise deny the allegations in the paragraph.

C.3 The Third Applicant

23. The Respondents admit the allegations in paragraph 23 of the Claim.

24. The Respondents admit the allegations in paragraph 24 of the Claim and say further that, as a Commissioned Product, the commissions payable in respect of the North Personal Pension product held by the Third Applicant became grandfathered on and from 1 July 2013.

25. The Respondents deny the allegations in paragraph 25 of the Claim.

26. In answer to the allegations in paragraph 26 of the Claim, the Respondents:

26.1 say that the Third Applicant continued to hold the “North Personal Pension” product until around 24 September 2018;

26.2 otherwise deny the allegations in the paragraph.

27. In answer to the allegations in paragraph 27 of the Claim, the Respondents say that:

27.1 on or around 11 September 2018, the Third Applicant received personal advice from Kevin Blackshaw to:

27.1.1 transfer the funds held through his “North Personal Pension” product to another product, the “MyNorth Pension” fund;

27.1.2 apply the “Protected Growth Guarantee” to that product;

27.2 the advice provided by Mr Blackshaw was recorded in a Statement of Advice dated 11 September 2018 (**2018 Brotton SOA**);

27.3 otherwise deny the allegations in the paragraph.

28. In answer to the allegations in paragraph 28 of the Claim, the Respondents:

- 28.1 refer to and repeat paragraph 27 above;
- 28.2 admit that on or around 13 September 2018, the Third Applicant acquired the MyNorth Pension product with the Protected Growth Guarantee;
- 28.3 otherwise deny the allegations in the paragraph.
- 29. In answer to the allegations in paragraph 29 of the Claim, the Respondents:
 - 29.1 admit the MyNorth Pension product was a financial product within the meaning of section 763A(1) of the Corporations Act and a Commissioned Product;
 - 29.2 say that, as a Commissioned Product, the commissions payable in respect of the MyNorth Pension product held by the Third Applicant became grandfathered on and from 1 July 2013;
 - 29.3 refer to and repeat paragraphs 27 and 28 above;
 - 29.4 otherwise deny the allegations in the paragraph.
- 30. The Respondents deny the allegations in paragraph 30 of the Claim and say further that the Third Applicant ceased holding MyNorth Pension – Protected Growth Guarantee on around 26 August 2019.
- 31. In answer to the allegations in paragraph 31 of the Claim, the Respondents:
 - 31.1 refer to and repeat paragraphs 41 to 43 below;
 - 31.2 say that during the Relevant Period Commissions (as described in paragraph 41 below) were paid with respect to:
 - 31.2.1 the North Personal Pension product up to around 24 September 2018;
 - 31.2.2 MyNorth Pension – Protected Growth Guarantee up to around 26 August 2019;
 - 31.3 otherwise deny the allegations in the paragraph.

C.4 The Fourth Applicant

- 32. In answer to the allegations in paragraph 32 of the Claim, the Respondents:

- 32.1 say that on or around 14 March 2001, the Fourth Applicant received personal advice from Michael Foster of Hillross Financial Services Limited to acquire an investment product called "PortfolioCare Investment Service";
 - 32.2 say that the advice provided by Mr Foster was recorded in a "Limited Advice Financial Plan" dated 14 March 2001 (**14 March 2001 LAFP**) addressed to the Fourth Applicant and another individual;
 - 32.3 say that the advice provided by Mr Foster to the Fourth Applicant was given before the introduction and application of:
 - 32.3.1 the statutory obligations under sections 961B(1) and 961J of the Corporations Act; and
 - 32.3.2 the prohibition on conflicted remuneration under sections 963E-963L of the Corporations Act;
 - 32.4 otherwise do not know and do not admit the allegations in the paragraph.
33. In answer to the allegations in paragraph 33 of the Claim, the Respondents:
- 33.1 say that on or around 20 April 2001, an investment product called "PortfolioCare Investment Service" was acquired by the Fourth Applicant and another individual;
 - 33.2 otherwise do not know and do not admit the allegations in the paragraph.
34. The Respondents admit the allegations in paragraph 34 of the Claim and say further that, as a Commissioned Product, the commissions payable in respect of the PortfolioCare Investment Service product held by the Fourth Applicant became grandfathered on and from 1 July 2013.
35. The Respondents admit the allegations in paragraph 35 of the Claim.
36. The Respondents admit the allegations in paragraph 36 of the Claim and:
- 36.1 refer to and repeat paragraphs 41 to 43 below;
 - 36.2 say that Commissions (as described in paragraph 41 below) were paid with respect to the PortfolioCare Investment Service product during the Relevant Period up to around 16 October 2018.

D THE RELEVANT PRODUCTS

D.1 Commissioned Products

37. The Respondents admit the allegations in paragraph 37 of the Claim.

38. The Respondents admit the allegations in paragraph 38 of the Claim.

D.2 AMP Life Products

39. In answer to the allegations in paragraph 39 of the Claim, the Respondents:

39.1 say that Flexible Lifetime – Protection is the product name given to a group of life insurance products issued by AMP Life under the “Life Protection Plan”, “Income Protection Plan” or “Business Overheads Insurance Plan”;

39.2 say that:

39.2.1 Flexible Lifetime – Super, AMP Flexible Super – Flexible Protection and AMP Flexible Super – Super Protection are names given to superannuation products issued by the AMP superannuation trustee at the relevant time;

39.2.2 AMP Life issued one or more life insurance policies to the superannuation trustee in respect of such superannuation products, and certain members were beneficiaries under those policies;

39.3 otherwise deny the allegations in the paragraph.

40. In answer to the allegations in paragraph 40 of the Claim, the Respondents:

40.1 say that only Flexible Lifetime – Protection offered the benefits described at paragraphs 40.3 and 40.5 of the Claim, which benefits were not available in AMP Flexible Super;

40.2 otherwise admit the allegations in the paragraph.

E COMMISSIONS AND OTHER INCENTIVES

E.1 Commissions

41. The Respondents admit the allegations in paragraph 41 of the Claim and say further that:

- 41.1 during the Relevant Period, AMP Licensees had in place agreements or arrangements with various providers of policies of insurance and other financial products which, amongst other things, outlined the circumstances in which Commissions in relation to those products would be paid to those licensees;
- 41.2 those agreements or arrangements were commonly known as distribution agreements, facilitation agreements or licensee agreements.
42. The Respondents admit the allegations in paragraph 42 of the Claim and say further that during the Relevant Period, the AMP Licensees had in place agreements or arrangements with AMP Life pursuant to which AMP Life agreed to remunerate AMP Licensees in accordance with the terms of those agreements or arrangements.

Particulars

- A. Facilitation Agreement dated 21 May 2010 between AMPFP and AMP Life (AMF.1002.0001.0001).
- B. Facilitation Agreement dated 21 May 2010 between Hillross and AMP Life (AMF.1002.0006.0001).
- C. Distribution Agreement between Charter and AMP Life dated 1 March 2004 (AMF.3001.0002.0001).
- D. Post FOFA template Licensee Agreement dated 27 June 2013 (AMF.1002.0001.0280).
- E. AMP Licensee Agreement Template dated July 2013 (AMF.1002.0001.0248).
- F. Variation to Facilitation Agreements dated 8 October 2015 (AMF.3009.0001.0001).
- G. AMP Licensee Agreement Template dated 1 January 2017 (AMF.1002.0001.0057).
- H. AMP Life Facilitation Agreement v1.1 dated 1 January 2019 (AMF.3006.0001.0012).
- I. Licensee Agreement dated 30 June 2020 between AWM Services Pty Ltd and AMP Financial Planning Ltd (AMF.3008.0001.0013).
- J. Template Facilitation Agreement for AMP Life dated unclear (AMF.1002.0001.0254).
- K. AMP Platforms Renumeration Schedule to the AFSL Licensee Agreement (AMF.1002.0001.0064).
- L. AMP Facilitation Schedule (AMF.3009.0001.0002).
- M. Further particulars may be provided with discovery and evidence.

43. In answer to the allegations in paragraph 43 of the Claim, the Respondents:
- 43.1 refer to and repeat paragraphs 41 and 42 above;
 - 43.2 say that the terms on which Commissions were payable or paid:
 - 43.2.1 were set by the product provider and generally governed by the relevant agreement (as updated from time to time) in place between the AMP Licensee and the product provider;
 - 43.2.2 varied among product providers and products;
 - 43.2.3 in some cases were payable on a product by product basis and calculated by reference to the declared unit price of the investment;
 - 43.2.4 in some cases included upfront and/or trailing commissions;
 - 43.3 otherwise deny the allegations in the paragraph.
44. In answer to the allegations in paragraph 44 of the Claim, the Respondents:
- 44.1 refer to and repeat paragraphs 41, 42 and 43 above;
 - 44.2 say that, during the Relevant Period, the terms on which Commissions (including upfront and trailing commissions) were payable to the AMP Licensees in respect of financial products (other than insurance products):
 - 44.2.1 were set by the product provider and generally governed by the relevant agreement (as updated from time to time) in place between the AMP Licensee and the product provider;
 - 44.2.2 varied among product providers and products;
 - 44.2.3 in some cases were payable on a product by product basis and calculated by reference to the declared unit price of the investment;
 - 44.2.4 in some cases included upfront and/or trailing commissions;
 - 44.3 otherwise deny the allegations in the paragraph.
45. The Respondents deny the allegations in paragraph 45 of the Claim and:
- 45.1 refer to and repeat paragraph 7 above;

- 45.2 say that during the Relevant Period, the Authorised Representative Agreements were updated from time to time;
- 45.3 say further that during the Relevant Period, in the first instance, AMP Licensees (as the ASFL holders) received all fees and commissions referable to a client of an AMP Authorised Representative and:
 - 45.3.1 from those fees and commissions, AMP Licensees would deduct relevant licensee fees or other charges, then pay the remaining amount to the Practices;
 - 45.3.2 refer to and repeat paragraph 91.1 below and further say that the remuneration of the AMP Authorised Representative employed or contracted by the Practice was a matter to be determined between the AMP Authorised Representative and the Practice.

Particulars

In practice, during the Relevant Period, Practices would receive a net payment of fees less the licensee fee, and any miscellaneous payables, being other payments paid by the Practice to the AMP Licensee or other AMP entities for administrative items such as paraplanning, certain debts, insurance, ASIC levies, software or association membership fees.

- 46. In answer to the allegations in paragraph 46 of the Claim, the Respondents:
 - 46.1 admit that any right of a Practice to be paid an amount determined by reference to commissions on a Commissioned Product was a **client register right** (as explained in paragraph 52 below) that could be acquired by the AMP Licensee in accordance with a **buy-back right** (as also explained in paragraph 52 below);
 - 46.2 say that none of the client register rights of the AMP Authorised Representatives who dealt with or advised the Applicants were acquired by the AMP Licensee in accordance with buy-back rights during the Relevant Period;
 - 46.3 otherwise deny the allegations in the paragraph.
- 47. The Respondents deny the allegations in paragraph 47 of the Claim and say further that:
 - 47.1 whether or not the matters alleged in paragraphs 45 and 46 of the Claim or admitted in paragraphs 45 and 46 above could reasonably be expected to influence the personal advice given to clients by AMP Authorised Representatives with respect to Commissioned Products (including any recommendation to

acquire, renew or continue to hold one or more AMP Life Products) requires a consideration of matters relevant to the particular client and the particular AMP Authorised Representative, including whether:

- 47.1.1 the AMP Authorised Representative providing the personal advice was to receive the commission as a result of providing the personal advice;
- 47.1.2 there was an alternative but comparable and otherwise appropriate product reasonably available with a different level of commission payable;
- 47.2 from 1 July 2013, AMP Authorised Representatives were required to comply with the statutory duty to act in the best interests of the client, the duty of priority and the duty to provide appropriate advice;

Particulars

Sections 961B, 961J and 961G of the Corporations Act.

- 47.3 the AMP Licensees had in place various systems and processes designed to ensure that AMP Authorised Representatives complied with their statutory duties with respect to the provision of personal advice including the duties under sections 961B and 961J of the Corporations Act;
- 47.4 otherwise deny the allegations in the paragraph.

47A. In answer to the allegations in paragraph 47A of the Claim, the Respondents:

47A.1 refer to and repeat paragraphs 41, 42 and 45 above; and

47A.2 otherwise deny the allegations in the paragraph.

E2 Other Incentive Payments

48. In answer to the allegations in paragraph 48 of the Claim, the Respondents:

- 48.1 refer to and repeat paragraphs 41 and 42 above;
- 48.2 otherwise deny the allegations in the paragraph.

49. In answer to the allegations in paragraph 49 of the Claim, the Respondents:

- 49.1 refer to and repeat paragraphs 41 and 42 above;
- 49.2 otherwise deny the allegations in the paragraph.

50. In answer to the allegations in paragraph 50 of the Claim, the Respondents:

50.1 refer to and repeat paragraphs 48 and 49 above;

50.2 say that during the Relevant Period, pursuant to the Authorised Representative Agreements, Practices were entitled to receive payments based on factors such as the revenue of the Practice or financial contribution by the Practice to the AMP Licensees;

50.3 say that such payments were, in some instances, subject to the AMP Licensees deducting relevant licensee fees or expenses;

50.4 say that the payments were made by the AMP Licensees to the Practice, rather than directly to any AMP Authorised Representative from a Practice;

50.5 say that the remuneration of AMP Authorised Representatives employed or contracted by the Practices was a matter to be determined between the relevant AMP Authorised Representative and the relevant Practice;

50.6 otherwise deny the allegations in the paragraph.

51. In answer to the allegations in paragraph 51 of the Claim, the Respondents:

51.1 refer to and repeat paragraphs 47.2, 47.3 and 48 to 50 above;

51.2 say that whether or not the matters alleged in paragraphs 48 to 50 of the Claim or admitted in paragraphs 48 to 50 above could reasonably be expected to influence the personal advice given to clients by AMP Authorised Representatives with respect to Commissioned Products (including any recommendation to acquire, renew or continue to hold one or more AMP Life Products) requires a consideration of matters relevant to the particular client and the particular AMP Authorised Representative, including whether:

51.2.1 the AMP Authorised Representative providing the personal advice was to receive, or was more likely to receive, the payment as a result of providing the personal advice;

51.2.2 there was, in relation to a given client, an alternative but comparable and otherwise appropriate product reasonably available which, if acquired by the client, would or was likely to result in a different amount being payable to the AMP Authorised Representative,

matters which, in turn, depended upon factors relevant to the individual Practice, including the overall revenue of the Practice and its financial contribution to the AMP Licensees;

51.3 otherwise deny the allegations in the paragraph.

51A. In answer to paragraph 51A of the Claim, the Respondents:

51A.1 refer to and repeat paragraphs 48 to 50 above; and

51A.2 otherwise deny the allegations in the paragraph.

E.3 Buy-Back Options

52. In answer to the allegations in paragraph 52 of the Claim, the Respondents:

52.1 say that during the Relevant Period AMP Authorised Representatives had certain “register rights” in relation to their clients (**client register rights**) pursuant to the terms of an Authorised Representative Agreement;

52.2 refer to and repeat paragraph 46 above;

52.3 say the client register rights in relation to a given client of an AMP Authorised Representative included:

52.3.1 the right to contact and provide advice and other financial services to the client;

52.3.2 the right to access the client’s file and records;

52.3.3 in certain cases, the right to receive certain payments when they were made, including ongoing service fees;

52.4 say that where an AMP Authorised Representative intended to cease to be an AMP Authorised Representative (for example, where the AMP Authorised Representative intended to retire or close his or her Practice), some AMP Authorised Representatives could, in certain circumstances, request that the relevant AMP Licensee purchase, or “buy back”, the AMP Authorised Representative’s client register rights for value (**buy-back rights**);

52.5 say that the AMP Authorised Representative could not exercise the buy-back rights without giving a period of notice, which varied from 6 to 18 months (**BOLR Notice Period**);

- 52.6 say that during the BOLR Notice Period, the AMP Licensee would attempt to assist the AMP Authorised Representative to complete a transfer of his or her client register rights (including ongoing service fees) in respect of some or all of the AMP Authorised Representative's clients to another AMP Authorised Representative;
- 52.7 say that if a transfer of the kind referred to in paragraph 52.6 above did not occur within the BOLR Notice Period, the AMP Authorised Representative was entitled to exercise their buy-back rights and the AMP Licensee would act as a "buyer-of-last-resort" and purchase, or "buy back", the AMP Authorised Representative's client register rights;
- 52.8 say that the arrangements referred to in paragraphs 52.1 to 52.7 above, where applicable, were known by different names across the AMP Licensees and the subject of different policies for each AMP Licensee, but for the purposes of this Defence AMP adopts the term **BOLR Policy** to describe the arrangements as they applied to each AMP Licensee;

Particulars

- A. At AMPFP, the arrangements were known as Buyer of Last Resort (**BOLR**) and were also set out in the Register and BOLR Policy of AMPFP dated 1 July 2012 and amendments to that policy, thereafter superseded by a revised BOLR Policy dated 1 June 2017.
 - B. At Charter, the arrangements were known as the Buyout Option and the Enhanced Buyout Option and were also set out in the Standard Practices – Buy Out Option Policy of Charter.
 - C. At Hillross, the arrangements were known as the Licensee Buy-Back and Enhanced Buy-Back and were also set out in the Terms and Conditions Manual for Register and Buy-Back of Hillross dated June 2013.
- 52.9 say that the BOLR Policy expressly provided that an AMP Authorised Representative was only entitled to ongoing service fees where services were in fact provided;

Particulars

- A. In respect of AMPFP, Register and BOLR Policy of AMPFP dated 1 July 2012, p 6; and Revised BOLR Policy dated 1 June 2017, p 4.
- B. In respect of Charter, Standard Practices – Buy Out Option Policy of Charter, p 3.

C. In respect of Hillross, Terms and Conditions Manual for Register and Buy-Back of Hillross dated June 2013, p 10.

- 52.10 say that where the client register rights were purchased by an AMP Licensee as a “buyer of last resort”, those client register rights were from time to time placed in the “**BOLR Pool**” until those client register rights were allocated to an AMP Authorised Representative;
- 52.11 say that some client register rights were never allocated to an AMP Authorised Representative;
- 52.12 otherwise deny the allegations in the paragraph.
53. In answer to the allegations in paragraph 53 of the Claim, the Respondents:
- 53.1 refer to and repeat paragraph 52 above;
- 53.2 otherwise deny the allegations in the paragraph.
54. In answer to the allegations in paragraph 54 of Claim, the Respondents:
- 54.1 say that whether or not the matters alleged in paragraphs 52 and 53 of the Claim or admitted in paragraphs 52 and 53 above could reasonably be expected to influence the personal advice given to clients by AMP Authorised Representatives with respect to Commissioned Products (including any recommendation to acquire, renew or continue to hold one or more AMP Life Products) requires a consideration of matters relevant to the particular client and the particular AMP Authorised Representative, including:
- 54.1.1 the likelihood, at the time the advice was given, of the AMP Authorised Representative ultimately exercising their buy-back rights on terms which depended on the value of commissions received as a result of providing advice to clients;
- 54.1.2 whether the AMP Authorised Representative providing the personal advice was, or was more likely, to receive a commission as a result of providing the personal advice which might ultimately influence the value of their buy-back rights;
- 54.1.3 whether there was, in relation to a given client, an alternative but comparable and otherwise appropriate product that was reasonably available which, if acquired by the client, would or was likely to result in a

different amount being payable to the AMP Authorised Representative by way of commission and, ultimately, by way of consideration for transfer of their client register rights;

54.1.4 refer to and repeat paragraphs 46 and 47.2 above;

54.2 otherwise deny the allegations in the paragraph.

54A. In answer to paragraph 54A of the Claim, the Respondents:

54A.1 refer to and repeat paragraphs 52 and 53 above;

54A.2 say that in the absence of proper particularisation of the systems, policies and processes referred to in paragraph 54A of the Claim, the pleading is embarrassing and liable to be struck out; and

54A.3 otherwise deny the allegations in the paragraph.

F CONDUCT IN RELATION TO GROUP MEMBERS

55. In answer to the allegations in paragraph 55 of the Claim, the Respondents:

55.1 in respect of the First Applicant, refer to and repeat paragraphs 10 to 16 above;

55.2 in respect of the Second Applicant, refer to and repeat paragraphs 17 to 22 above;

55.3 in respect of the Third Applicant, refer to and repeat paragraphs 23 to 31 above;

55.4 in respect of the Fourth Applicant, refer to and repeat paragraphs 32 to 36 above;

55.5 otherwise do not know and do not admit the allegations in the paragraph.

56. In answer to the allegations in paragraph 56 of the Claim, the Respondents:

56.1 refer to and repeat paragraph 55 above;

56.2 otherwise do not know and do not admit the allegations in the paragraph.

57. In answer to the allegations in paragraph 57 of the Claim, the Respondents:

57.1 refer to and repeat paragraphs 15, 22, 31, 36, 41 to 46 and 55 above;

57.2 say that Commissions were not always deducted as administration, investment or management fees or as part of the insurance fees or as part of the declared unit price for products;

- 57.3 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;
- 57.4 otherwise deny the allegations in the paragraph.
- 58. In answer to the allegations in paragraph 58 of the Claim, the Respondents:
 - 58.1 refer to and repeat paragraphs 55 to 56 above;
 - 58.2 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;
 - 58.3 otherwise deny the allegations in the paragraph.
- 58A. In answer to paragraph 58A of the Claim, the Respondents:
 - 58A.1 refer to and repeat paragraphs 55 and 56 above;
 - 58A.2 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members; and
 - 58A.3 otherwise deny the allegations in the paragraph.
- 59. In answer to the allegations in paragraph 59 of the Claim, the Respondents:
 - 59.1 refer to and repeat paragraphs 41 to 46 above;
 - 59.2 otherwise deny the allegations in the paragraph.
- 60. In answer to the allegations in paragraph 60 of the Claim, the Respondents:
 - 60.1 refer to and repeat paragraph 59 above;
 - 60.2 say that the remuneration of the AMP Authorised Representatives employed or contracted by the Practices was a matter to be determined between the AMP Authorised Representatives and their Practices and was not at all times throughout the Relevant Period monitored or supervised by the AMP Licensees;
 - 60.3 otherwise deny the allegations in the paragraph.
- 61. In answer to the allegations in paragraph 61 of the Claim, the Respondents:
 - 61.1 refer to and repeat section H below;

61.2 say that the allegation in paragraph 61.2, insofar as it concerns the Applicants, is embarrassing as the Applicants have not identified with sufficient particularity which "statements and correspondence" are relied upon;

61.3 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

61.4 otherwise deny the allegations in the paragraph.

G CONDUCT IN RELATION TO STACK SUB-GROUP MEMBERS

62. The Respondents do not plead to the allegations in paragraph 62 of the Claim as it contains no allegations against them.

63. In answer to the allegations in paragraph 63 of the Claim, the Respondents:

63.1 refer to and repeat paragraphs 10 to 14 above;

63.2 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

63.3 otherwise deny the allegations in the paragraph.

64. In answer to the allegations in paragraph 64 of the Claim, the Respondents:

64.1 refer to and repeat paragraphs 10 to 14 above;

64.2 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

64.3 otherwise deny the allegations in the paragraph.

65. In answer to the allegations in paragraph 65 of the Claim, the Respondents:

65.1 refer to and repeat paragraphs 10 to 14 and 64 to 65 above;

65.2 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

65.3 otherwise do not know and do not admit the allegations in the paragraph.

66. In answer to the allegations in paragraph 66 of the Claim, the Respondents:

66.1 refer to and repeat paragraph 16 above;

- 66.2 say that AMP Life charged premiums on the First Applicant's AMP Flexible Super – Flexible Protection;
 - 66.3 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;
 - 66.4 otherwise deny the allegations in the paragraph.
67. In answer to the allegations in paragraph 67 of the Claim, the Respondents:
- 67.1 say that whether a comparable product existed that was more suitable for the needs and objectives of any particular person and whether that person should have been advised to acquire that product requires a consideration of, amongst other things:
 - 67.1.1 the needs, objectives and circumstances of the person at a particular point in time including their occupation, if any;
 - 67.1.2 what other financial products they held;
 - 67.1.3 what was disclosed to any person providing financial advice to the person;
 - 67.2 say that on 11 March 2021, the Respondents (through their solicitors) made a request for further and better particulars of the paragraph, including what was meant by the words "substantially equivalent" and "better";
 - 67.3 say that on 11 April 2021, the Applicants (through their solicitors) responded to that request for further and better particulars and indicated that the words "substantially equivalent or better" meant "substantially equivalent or better by reference to the interests of the First Applicant and Stack Sub-Group Members, and otherwise have their natural and ordinary meaning";
 - 67.4 say that in the absence of proper particularisation of what is meant by "substantially equivalent" and "better", the pleading in paragraph 67 is embarrassing and liable to be struck out;
 - 67.5 say further that they are unable to plead to unparticularised allegations regarding the First Applicant and unidentified Group Members;
 - 67.6 otherwise deny the allegations in the paragraph.

68. In answer to the allegations in paragraph 68 of the Claim, the Respondents:

68.1 refer to and repeat paragraph 67 above;

68.2 otherwise deny the allegations in the paragraph.

69. In answer to the allegations in paragraph 69 of the Claim, the Respondents:

69.1 refer to and repeat paragraphs 16, 66, 67 and 68 above;

69.2 otherwise deny the allegations in the paragraph.

H CONDUCT IN RELATION TO OSF SUB-GROUP MEMBERS

70. The Respondents do not plead to the allegations in paragraph 70 of the Claim as it contains no allegations against them.

71. In answer to the allegations in paragraph 71 of the Claim, the Respondents:

71.1 say that throughout the Relevant Period, AMP Authorised Representatives from time to time negotiated ongoing fee arrangements directly with their clients;

71.2 say that during the Relevant Period, the arrangements in respect of ongoing service fees:

71.2.1 were typically set out in documents known as Ongoing Fee Agreements (**OFAs**), Statements of Advice (**SOAs**) and, following the introduction of the Future of Financial Advice reforms (**FOFA Reforms**) from at least 1 July 2013, Fee Disclosure Statements (**FDSs**);

71.2.2 were, for part of the Relevant Period, subject to statutory provisions that provided they would in certain circumstances lapse after a period of two years, unless an opt-in-renewal notice was received from the client or a new arrangement was negotiated;

Particulars

Section 962N of the Corporations Act.

71.2.3 were required to be expressly disclosed by the AMP Authorised Representatives to their clients, which disclosures were typically set out in the OFAs, SOAs or FDSs;

71.2.4 were, in practice, also disclosed to clients through statements provided to them at least annually throughout the period;

71.3 say that the services described in paragraphs 71.1 to 71.7 of the Claim are examples of services that may have been offered to clients by AMP Authorised Representatives throughout the Relevant Period and say that such services may have also included:

71.3.1 the provision of information regarding policy updates;

71.3.2 a direct share portfolio service at discounted brokerage rates;

71.3.3 ongoing advice in relation to superannuation strategies and timing of contributions;

71.3.4 zero switching fees when investments or products needed to be changed;

71.3.5 24-hour internet access to investments and product information;

71.4 say that the services depended on the specific AMP Authorised Representative as well as the needs of, and the terms of the ongoing fee arrangement with, the individual client;

71.5 otherwise deny the allegations in the paragraph.

72. In answer to the allegations in paragraph 72 of the Claim, the Respondents:

72.1 say that in respect of the Second Applicant:

72.1.1 during the time the Second Applicant held the Flexible Lifetime – Protection Plan product, she did not pay any ongoing service fees for that product;

72.1.2 the 2014 Winterton SOA in respect of AMP Flexible Super – Flexible Protection disclosed that if the Second Applicant acquired it, she would in doing so agree to an “ongoing advice fee” of \$23.30 per annum which was to be charged monthly and deducted directly from her account;

72.1.3 the 2014 Winterton SOA stated that the services provided for that “ongoing advice fee” would include:

a. preparation of the recommendations in the 2014 Winterton SOA;

- b. offer of an annual review;
- c. continuing education on investment and financial issues via a quarterly e-newsletter;
- d. transaction based services and support including email correspondence, general advice over the phone relevant to the Second Applicant's circumstances, contacting the Second Applicant's employers/paymasters and general administration and management;

72.1.4 the Second Applicant accepted the "ongoing advice fee" when she acquired AMP Flexible Super – Flexible Protection on or around 27 August 2014;

72.1.5 the Second Applicant paid approximately \$1.54/month (or \$40.51 in total) in ongoing service fees during the time she held AMP Flexible Super – Flexible Protection.

72.2 say that in respect of the Fourth Applicant:

72.2.1 the 14 March 2001 LAFP for the PortfolioCare Investment Service product disclosed that the Fourth Applicant was required to pay:

- a. a one-off establishment fee;
- b. a one-off default entry fee;
- c. Standard Adviser Service Revenue of 0.5% per annum;

72.2.2 during the time he held the PortfolioCare Investment Service product, the Fourth Applicant did not pay any ongoing service fees in respect of that product;

72.3 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

72.4 otherwise deny the allegations in the paragraph.

73. In answer to the allegations in paragraph 73 of the Claim, the Respondents:

73.1 refer to and repeat paragraphs 71 and 72 above;

73.2 in respect of paragraph 73.1:

73.2.1 say that the provision of personal advice may have been one of the services agreed by AMP Authorised Representatives to some clients pursuant to the terms of any ongoing fee agreements between them and their clients;

73.2.2 otherwise deny the allegations in the paragraph;

73.3 in respect of paragraph 73.2:

73.3.1 say that sections 961B and 961J of the Corporations Act were in force from 1 July 2013;

73.3.2 otherwise deny the allegations in the paragraph.

73.4 in respect of paragraph 73.3:

73.4.1 say that to the extent one of the services agreed to be provided by AMP Authorised Representatives included the provision of personal advice, it was also agreed that that advice would be provided in an SOA when so required by law;

73.4.2 otherwise deny the allegations in the paragraph;

73.5 in respect of paragraph 73.4:

73.5.1 say that the Second Applicant agreed to pay, and paid, an ongoing service fee in respect of AMP Flexible Super – Flexible Protection, as alleged in paragraphs 72.1.2 to 72.1.5 above;

73.5.2 say that the Fourth Applicant did not agree to pay, and did not pay, any ongoing service fees in respect of the PortfolioCare Investment Service product he acquired, as alleged in paragraph 72.2 above;

73.6 say further in relation to the whole of the paragraph that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

73.7 otherwise deny the allegations in the paragraph.

74. In answer to the allegations in paragraph 74 of the Claim, the Respondents:

74.1 refer to and repeat paragraphs 71 to 73 above;

- 74.2 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;
 - 74.3 otherwise deny the allegations in the paragraph.
75. In answer to the allegations in paragraph 75 of the Claim, the Respondents:
- 75.1 refer to and repeat paragraph 71 above;
 - 75.2 say that the interval at which an ongoing service fee was charged depended on the type of fee and the agreement with the client; however, generally such fees were collected on a fortnightly or monthly basis;
 - 75.3 say that while ongoing service fee arrangements were agreed between AMP Authorised Representatives and their clients directly, such fees were generally calculated using one of the following three methods:
 - 75.3.1 in the period after 1 July 2013, in respect of grandfathered accounts (that is arrangements entered into prior to the FOFA Reforms), an amount additional to the commission paid by the financial product user to the product issuer, calculated as a percentage of the value of the client's products;
 - 75.3.2 as a percentage of the value of the product(s) the subject of the advice given by the AMP Authorised Representative; or
 - 75.3.3 as a fixed fee via a product (where the product so allowed) or invoiced directly to the client, typically charged as a set amount or by reference to an hourly rate, and paid by the client to the AMP Licensee (for example, by cheque or electronic transfer), which retained its licensee fee and other charges before paying the remainder to the AMP Authorised Representative, as pleaded in paragraph 45.3.1 of this Defence above;
 - 75.4 otherwise deny the allegations in the paragraph.
76. In answer to the allegations in paragraph 76 of the Claim, the Respondents:
- 76.1 in respect of the Second Applicant, refer to and repeat paragraph 72.1.5 above;
 - 76.2 in respect of the Fourth Applicant, refer to and repeat paragraph 72.2.2 above;
 - 76.3 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

76.4 otherwise deny the allegations in the paragraph.

77. In answer to the allegations in paragraph 77 of the Claim, the Respondents:

77.1 say that the Second Applicant was provided with services throughout the time she held AMP Flexible Super – Flexible Protection;

Particulars

A. Mr Spears provided transaction-based services and support to the Second Applicant throughout the time she held AMP Flexible Super – Flexible Protection including:

- i. the provision of updates about the status of certain documents being prepared in relation to AMP Flexible Super – Flexible Protection;
- ii. liaising with the Second Applicant about how to provide her with relevant documents while she was residing in Thailand;
- iii. advising the Second Applicant as to who could witness her signature on application forms;
- iv. advising the Second Applicant in respect of queries she had in relation to AMP Flexible Super – Flexible Protection;
- v. on or around 24 April 2017, assisting the Second Applicant in the completion of a non-lapsing binding beneficiary nomination.

B. Further particulars may be provided with discovery and evidence.

77.2 say that the Fourth Applicant did not pay any ongoing service fees and refer to paragraph 72.2.2 above;

77.3 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

77.4 otherwise deny the allegations in the paragraph.

78. In answer to the allegations in paragraph 78 of the Claim, the Respondents:

78.1 refer to and repeat paragraph 77 above;

78.2 otherwise deny the allegations in the paragraph.

79. In answer to the allegations in paragraph 79 of the Claim, the Respondents:

79.1 refer to and repeat paragraph 52 above;

79.2 otherwise deny the allegations in the paragraph.

80. In answer to the allegations in paragraph 80 of the Claim, the Respondents:

80.1 refer to and repeat paragraph 52 above;

80.2 say that when client register rights were placed in the BOLR Pool the AMP Licensee required the removal of any ongoing service fees to which the client was subject at the settlement of the transaction between the AMP Authorised Representative and the AMP Licensee, such that any uplift that had been agreed between the client and the AMP Authorised Representative beyond the financial product commission only rate was removed or "switched off" so that they were not paying ongoing service fees;

80.3 otherwise deny the allegations in the paragraph.

81. In answer to the allegations in paragraph 81 of the Claim, the Respondents:

81.1 refer to and repeat paragraphs 79 and 80 above;

81.2 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

81.3 otherwise deny the allegations in the paragraph.

82. In answer to the allegations in paragraph 82 of the Claim, the Respondents:

82.1 refer to and repeat paragraphs 79 to 81 above;

82.2 say that the Second Applicant's and the Fourth Applicant's client register rights were never transferred to the BOLR Pool;

82.3 say that in respect of some of the clients whose client register rights were transferred into the BOLR Pool, the relevant AMP Licensee failed to "switch off" those clients' ongoing service fees so that those clients continued to pay ongoing service fees for services which they did not receive, with the fees being received by the relevant AMP Licensee;

82.4 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

82.5 otherwise deny the allegations in the paragraph.

83. In answer to the allegations in paragraph 83 of the Claim, the Respondents:

83.1 refer to and repeat paragraphs 79 to 82 above;

83.2 say that in respect of those clients referred to in paragraph 82.3 above, a number of reasons contributed to the failure by the AMP Licensee to “switch off” those clients’ ongoing service fees, including those factors alleged in paragraphs 83.1 to 83.7 of the Claim;

83.3 otherwise deny the allegations in the paragraph.

84. In answer to the allegations in paragraph 84 of the Claim, the Respondents:

84.1 say that in the period from about 2008 up to November 2016 an ad hoc exception to the BOLR Policy was applied from time to time, such exception referred to as the **90 Day Exception**;

84.2 say that the 90 Day Exception was not formally documented in any of the written BOLR Policies of AMPFP and Hillross;

84.3 say that the 90 Day Exception was only applied from time to time by AMPFP and Hillross up to November 2016 (when it ceased to have effect);

Particulars

A. On 15 November 2016, a direction was given to all AMP Advice Licensees that the 90 Day Exception was to cease to be applied immediately. That direction was in an email from Justin Morgan (Head of Licensee Value Management for AMP) to various AMP staff dated 15 November 2016 at 5:15pm.

B. Thereafter, AMP commissioned Deloitte to perform a review to provide assurance that the 90 Day Exception had, in fact, ceased to be applied in November 2016, and all affected clients had been identified. Deloitte provided that assurance in a report titled “Phase 1 Look-Back Report” on 24 November 2017.

84.4 say that the 90 Day Exception was applied from time to time such that, when it was applied, AMPFP and Hillross continued to charge some clients whose client register rights were in the BOLR Pool fees pursuant to the ongoing service fee arrangements between the client and the outgoing AMP Authorised Representative for a period typically of up to 90 days, provided generally that:

84.4.1 an incoming AMP Authorised Representative had been identified to purchase the client register rights of an outgoing AMP Authorised

Representative and that the incoming AMP Authorised Representative would continue to provide ongoing services;

84.4.2 the transaction could not complete before the BOLR Notice Period expired;

84.4.3 a request had been made for the 90 Day Exception to be applied, such request being made to a person within AMPFP or Hillross who purported to have authority to approve the application of the 90 Day Exception, and that person did, in fact, approve the application of the 90 Day Exception;

84.5 say that the 90 Day Exception was not applied in respect of the Second and Fourth Applicants;

84.6 say that the 90 Day Exception was applied in respect of no more than 2,188 clients' accounts (which did not include the Second or Fourth Applicants), which clients were charged approximately \$376,000 for ongoing service fees while their client register rights remained in the BOLR Pool;

84.7 say that the clients affected by the application of the 90 Day Exception have been paid compensation or are in the process of being remediated pursuant to a remediation commenced by AMP in or around May 2015;

84.8 admit that the 90 Day Exception was an aspect of the insufficiency of clear policy and guidance in relation to the requirements for switching off ongoing service fees;

84.9 otherwise deny the allegations in the paragraph.

85. In answer to the allegations in paragraph 85 of the Claim, the Respondents:

85.1 say that in some instances, clients who were subject to the 90 Day Exception had their ongoing service fees kept on for longer than 90 days without receiving services as their register rights were not allocated to a new servicing AMP Authorised Representative;

85.2 say that that was a result of a variety of factors including the matters alleged in paragraphs 83.1 to 83.7 of the Claim;

85.3 otherwise deny the allegations in the paragraph.

I TRAINING, SUPERVISION AND DETECTION/MANAGEMENT OF CONFLICTS

86. The Respondents admit the allegations in paragraph 86 of the Claim.

87. In answer to the allegations in paragraph 87 of the Claim, the Respondents:

- 87.1 say that on 11 March 2021, the Respondents (through their solicitors) made a request for further and better particulars of the paragraph, including what was meant by the words “adequate” and “adequately”;
- 87.2 say that on 11 April 2021, the Applicants (through their solicitors) responded to that request for further and better particulars and indicated that the words “adequate” and “adequately” “should be given their ordinary and natural meaning”;
- 87.3 say that in the absence of proper particularisation of what is meant by “adequate” and “adequately”, the pleading in paragraph 87 is embarrassing and liable to be struck out;
- 87.4 say that since 1 July 2013, the AMP Licensees provided policies, training and other support measures to AMP Authorised Representatives, and maintained oversight of the operations of AMP Authorised Representatives, in order to:
 - 87.4.1 identify and provide guidance on the obligations of AMP Authorised Representatives in relation to conflicts of interest, conflicted remuneration, alternative remuneration, prioritising clients’ interests and the best interests duty, including through specialised documents on relevant topics;

Particulars

- A. Best Interests Duty QAF dated April 2014 (AMF.3010.0001.1945);
- B. Conflicts of Interest QAF dated December 2013 (AMP.6000.0044.1795), December 2014 (AMP.6000.0007.1655), November 2016 (AMF.3010.0001.2751) (and Supplementary Guide dated November 2016, AMF.3010.0001.2046), February 2017 (AMP.6000.0044.2175) and November 2017 (AMP.6000.0044.2791);
- C. Conflicts of Interest Register contained in the Conflicts of Interest QAF (see above);
- D. Conflicts of Interest Policy dated November 2016 (AMP.6000.0124.0615);
- E. Conflicts of Interest Standard dated November 2016 (AMP.6000.0124.0620);
- F. Conflicts of Interest and Conflicted Remuneration Policy dated September 2018 (AMF.3010.0001.2833), March 2019 (AMF.3010.0001.3020), April 2019 (AMF.3010.0001.2872), October 2019 (AMF.3010.0001.2959), February 2020

(AMF.3010.0001.2915) and December 2020
(AMF.3010.0001.3003).

- 87.4.2 inform AMP Authorised Representatives of their obligation under the best interests duty to act in retail clients' best interests and place those clients' interests ahead of the AMP Authorised Representative's own when developing and providing personal advice;
- 87.4.3 outline appropriate compliance processes and provide assistance by monitoring their implementation, including in relation to:
 - a. disclosing conflicts of interests in FSGs/FSCGs and advice documents;
 - b. disclosing remuneration and alternative remuneration in advice documents;
 - c. providing advice appropriate for clients' circumstances;
 - d. placing clients' interests ahead of the AMP Authorised Representative's own interests when providing advice;
 - e. reporting conflicts of interest issues or potential incidents;
- 87.4.4 monitor, vet and audit the quality of advice AMP Authorised Representatives provided to clients to consider, amongst other things, whether in the context of the provision of the advice:
 - a. there are any conflicts of interest;
 - b. clients' interests have been prioritised;
 - c. the best interests duty has been complied with;
 - d. relevant policies and guidelines of the AMP Licensees have been applied.
- 87.4.5 inform and train AMP Authorised Representatives about conflicts of interest and the best interests duty, including appropriate levels of investigation into alternative products and strategies;
- 87.4.6 assess AMP Authorised Representatives' understanding of their obligations in relation to conflicts of interest, prioritising clients' interests and the best interests duty;

87.5 otherwise deny the allegations in the paragraph.

88. The Respondents admit the allegations in paragraph 88 of the Claim.

89. In answer to the allegations in paragraph 89 of the Claim, the Respondents:

89.1 say that the AMP Conflicts of Interest QAFs utilised by the AMP Licensees during the Relevant Period were not limited to providing guidance 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, but rather dealt with broader issues of identifying and managing conflicts of interest for AMP Authorised Representatives in the course of their roles;

89.2 say that before 1 January 2018 a monetary benefit in relation to a life risk insurance product (other than a group life policy for members of a superannuation entity or a life policy for members of a default superannuation fund) was not conflicted remuneration;

Particulars

- A. Section 963B(1)(b) of the Corporations Act;
- B. Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice Measures) 2012;
- C. Explanatory Memorandum to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012.

89.3 say that since 1 January 2018 a monetary benefit relating to a life risk insurance product (other than a group life policy for members of a superannuation entity or a life policy for members of a default superannuation fund) is not conflicted remuneration if it meets the benefit ratio and clawback requirements;

Particulars

- A. Sections 963B(1)(b) and 963BA of the Corporations Act and regulation 7.7A.11D(1) of the Corporations Regulations;
- B. ASIC Corporations (Life Insurance Commissions) Instrument 2017/510;
- C. Explanatory Memorandum to the Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016.

89.4 say further that the payment of commissions in respect of grandfathered accounts (that is arrangements entered into prior to the FOFA Reforms) was authorised by law;

Particulars

Subdivision 5 of Division 4 of Part 7.7A of the Corporations Regulations (which was repealed with effect from 1 January 2021).

- 89.5 otherwise deny the allegations in the paragraph.
- 90. In answer to the allegations in paragraph 90 of the Claim, the Respondents:
 - 90.1 refer to and repeat paragraph 89 above;
 - 90.2 otherwise deny the allegations in the paragraph.
- 91. In answer to the allegations in paragraph 91 of the Claim, the Respondents:
 - 91.1 say that during the Relevant Period they had in place policies and procedures in relation to the remuneration of AMP Authorised Representatives;
 - 91.2 say that during the Relevant Period the AMP Licensees monitored, vetted and audited advice provided by AMP Authorised Representatives for evidence that the best interests duty had been complied with, including by:
 - 91.2.1 giving priority to the interests of the client in the event of a conflict of interest;
 - 91.2.2 investigating and assessing suitable financial products;
 - 91.2.3 basing judgments on the client's relevant circumstances;
 - 91.3 say that the manner in which the AMP Authorised Representatives were paid for financial advice provided to retail clients was agreed:
 - 91.3.1 in the case of Practices, between the Practice and the client;
 - 91.3.2 in the case of individuals from Practices, between the individual and the Practice;
 - 91.4 otherwise deny the allegations in the paragraph.
- 92. The Respondents admit the allegations in paragraph 92 of the Claim.
- 93. In answer to the allegations in paragraph 93 of the Claim, the Respondents:
 - 93.1 refer to and repeat paragraphs 89 and 91 above;

93.2 otherwise deny the allegations in the paragraph.

94. The Respondents deny the allegations in paragraph 94 of the Claim and:

94.1 refer to and repeat paragraphs 87 and 93 above;

94.2 say that, in respect of paragraph 94.5 of the Claim, any deficiencies in the policies, training, supervision and monitoring systems and processes (which is denied) did not affect the performance of obligations to the Second and Fourth Applicants by reason of the matters alleged in paragraph 71 to 85 above;

94.3 say further that in the absence of particularised allegations regarding Group Members, they are unable to say whether any deficiencies in the policies, training, supervision and monitoring systems and processes affected the performance of obligations owed to such Group Members.

J APPROVED PRODUCTS

95. In answer to the allegations in paragraph 95 of the Claim, the Respondents:

95.1 admit that during the Relevant Period each of the AMP Licensees maintained an approved product list containing life and risk insurance products (along with investment products) (**APLs**);

95.2 say that during the Relevant Period each of the AMP Licensees also maintained a Special Risk Approved List containing life and risk insurance products designed for use with respect to a client who, by virtue of their health, occupation, pursuits or financial position, required a more specialised risk insurance solution;

95.3 say that AMP Authorised Representatives were authorised to recommend the products listed on the relevant APL to retail clients without requiring further approval from the relevant AMP Licensee;

95.4 refer to and repeat paragraph 98 below;

95.5 otherwise deny the allegations in the paragraph.

96. In answer to the allegations in paragraph 96 of the Claim, the Respondents:

96.1 say that during the Relevant Period until around 1 October 2017, the Flexible Lifetime – Protection product was available on the AMP Licensees' APLs to be recommended to new policy holders;

- 96.2 say that during the Relevant Period, Flexible Lifetime – Super, AMP Flexible Super – Flexible Protection and AMP Flexible Super – Super Protection were on the AMP Licensees’ APLs;
- 96.3 otherwise deny the allegations in the paragraph.
- 97. In answer to the allegations in paragraph 97 of the Claim, the Respondents:
 - 97.1 refer to and repeat paragraphs 67.2 to 67.3 above;
 - 97.2 say that in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraph 97 is embarrassing and liable to be struck out;
 - 97.3 say further and in any event that they are unable to plead to unparticularised allegations regarding the Applicants and unidentified Group Members;
 - 97.4 say that at all material times the APLs included a range of insurance products issued by third party insurers;
 - 97.5 otherwise deny the allegations in the paragraph.
- 98. In answer to the allegations in paragraph 98 of the Claim, the Respondents:
 - 98.1 say that during the Relevant Period, AMP Authorised Representatives required one-off approval from AMP Advice Research for any new recommendation for risk and insurance products not listed on the APL of their AMP Licensee (**Approval Requirement**);
 - 98.2 say that AMP Authorised Representatives were exempt from the Approval Requirement when recommending that a client retain, increase or decrease an existing insurance policy which was not on the relevant APL;
 - 98.3 say that AMP Advice Research was able to issue a blanket approval for a product not on the relevant APL where an AMP Authorised Representative was dealing with a group of clients with similar circumstances;
 - 98.4 otherwise deny the allegations in the paragraph.
- 98A. In answer to the allegations in paragraph 98A of the Claim, the Respondents:
 - 98A.1 refer to and repeat paragraph 98 above;

98A.2 in answer to paragraph 98A.1:

98A.2.1 say that during the Relevant Period, in order to obtain one-off approval to recommend an insurance product not on an applicable APL in accordance with the Approval Requirement, the AMP Authorised Representatives, for new business, were required to provide evidence that no product on the 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 APL;

98A.2.2 say further that during the Relevant Period, in order to obtain one-off approval to recommend an insurance product not on an applicable APL in accordance with the Approval Requirement, for new business:

- (a) AMP Advice Research would also review the basis for the approval sought to confirm that the requested feature was not available on the APL (or other providers who are not on the APL) before approval was provided;
- (b) AMP Authorised Representatives also had access to the online pre-assessment facility in order to identify if policy terms were available through a non-APL provider where, amongst other circumstances:
 - (i) an application for a product was loaded and the AMP Authorised Representative understood that more favourable terms could be available;
 - (ii) a client had made an application for cover which exceeded the generally available benefit levels; or
 - (iii) a client had a unique risk such as overseas cover or hazardous pursuits;
- (c) one-off approval may also be sought where AMP Authorised Representatives identified that a non-APL provider offered the best pre-assessment for a client;

98A.2.3 otherwise deny the allegations in the paragraph;

98A.3 in answer to paragraph 98A.2:

98A.3.1 say that during the Relevant Period, for existing business, AMP Authorised Representatives were exempt from the Approval Requirement when recommending that a client retain an existing insurance policy which was not on an applicable APL without any changes, or when recommending any in force business changes 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; and

98A.3.2 otherwise deny the allegations in the paragraph.

Particulars

- A. Life Risk Insurance Research Policy and APL version dated June 2018 (AMP.6000.0248.0267).
- B. Advice Research Process Manual versions dated March 2015 (AMF.1003.0004.5119), June 2016 (AMF.1003.0004.5520) and June 2017 (AMP.6000.0051.3583).

99. In answer to the allegations in paragraph 99 of the Claim, the Respondents:

- 99.1 admit that during the Relevant Period the AMP Licensees had benchmarking guidelines (**Benchmarking Guidelines**) for life risk insurance products made available to AMP Authorised Representatives to recommend to their clients;
- 99.2 say that the Benchmarking Guidelines set out how the AMP Licensees benchmarked the life risk insurance products on their respective APLs against a reasonable representation of similar products on the market;
- 99.3 otherwise deny the allegations in the paragraph.

100. The Respondents deny the allegations in paragraph 100 of the Claim and say further that:

- 100.1 they refer to and repeat paragraphs 67.2 to 67.3 above;
- 100.2 in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraph 100 is embarrassing and liable to be struck out;

- 100.3 in any event they are unable to plead to unparticularised allegations regarding the Applicants and unidentified Group Members;
 - 100.4 there are multiple factors that influence the premiums for life risk insurance products, including the insured's age, sex, occupation, smoking status, medical history and pastimes;
 - 100.5 life risk insurance premiums are liable to change over time and are only one factor in determining the suitability of a life risk insurance product for a particular client;
 - 100.6 other relevant factors in determining the appropriateness of a life risk insurance policy for a particular client include, but are not limited to:
 - 100.6.1 the scope of the cover and the terms of any exclusions;
 - 100.6.2 the features of the relevant product;
 - 100.6.3 any requirement for underwriting;
 - 100.6.4 the sum able to be insured and its appropriateness for the client's needs;
 - 100.6.5 eligibility and terms of the cover;
 - 100.7 the matters referred to in paragraphs 100.3 to 100.6 above were disclosed in the Benchmarking Guidelines which were made available to AMP Authorised Representatives.
101. In answer to the allegations in paragraph 101 of the Claim, the Respondents:
- 101.1 admit that during the Relevant Period the APLs maintained by each of the AMP Licensees contained a list of approved platforms (**Platform APLs**);
 - 101.2 say that AMP Authorised Representatives were authorised to recommend platforms on the Platform APLs without requiring further approval from the relevant AMP Licensee;
 - 101.3 otherwise deny the allegations in the paragraph.
102. In answer to the allegations in paragraph 102 of the Claim, the Respondents:
- 102.1 say that during the Relevant Period the Platform APLs included a majority of AMP group products (**AMP Platforms**);
 - 102.2 say that non-AMP platforms were also included on the Platform APLs;

102.3 otherwise deny the allegations in the paragraph.

103. In answer to the allegations in paragraph 103 of the Claim, the Respondents:

103.1 say that during the Relevant Period up until around late 2019 the only life and risk insurance products that could be placed on AMP's platforms were AMP Life products;

103.2 otherwise deny the allegations in the paragraph.

103A. In answer to the allegations in paragraph 103A of the Claim, the Respondents:

103A.1 in answer to paragraph 103A.1:

103A.1.1 admit that during the Relevant Period, AMPFP and Charter applied written policies which set out the process by which products were added to or removed from the APLs;

103A.1.2 admit that between March 2015 and the end of the Relevant Period, Hillross applied written policies which set out the process by which products were added to or removed from the APLs; and

103A.1.3 otherwise deny the allegations in the paragraph;

103A.2 admit the allegations in paragraph 103A.2.

104. In answer to the allegations in paragraph 104 of the Claim, the Respondents:

104.1 admit that during the Relevant Period AMP Superannuation Limited (**ASL**) was part of the AMP Group and the trustee of a number of superannuation funds;

104.2 say that during the Relevant Period up to 28 June 2019, ASL was a wholly owned subsidiary of AMP Life;

104.3 say that the superannuation funds of which ASL was trustee at times during the Relevant Period included:

104.3.1 AMP Retirement Trust;

104.3.2 AMP Superannuation Savings Trust;

104.3.3 AMP Eligible Rollover Fund,

(the **ASL Super Funds**);

104.4 otherwise deny the allegations in the paragraph.

105. In answer to the allegations in paragraph 105 of the Claim, the Respondents:

105.1 admit that during the Relevant Period N.M. Superannuation Pty Ltd (**NMS**; together with ASL, the **AMP Trustees**) was part of the AMP Group and was the trustee of a number of superannuation funds;

105.2 say that from 1 January 2017 to 28 June 2019, NMS was a wholly owned subsidiary of AMP Life;

105.3 say that the superannuation funds of which NMS was trustee at times during the Relevant Period included:

105.3.1 National Mutual Pro-Super Fund;

105.3.2 National Mutual Retirement Fund;

105.3.3 Super Directions Fund;

105.3.4 Wealth Personal Superannuation and Pension Fund;

105.3.5 The Retirement Plan;

(the **NMS Super Funds** and, together with the ASL Super Funds, the **AMP Super Funds**);

105.4 otherwise deny the allegations in paragraph 105 of the Claim.

106. In answer to the allegations in paragraph 106 of the Claim, the Respondents:

106.1 refer to and repeat paragraphs 39, 104 and 105 above;

106.2 in respect of paragraph 106.1, say that the relevant AMP Trustee as trustee of the applicable AMP Super Fund offered the AMP Life Products to certain members of the AMP Super Funds through or in their superannuation accounts;

106.3 otherwise deny the allegations in the paragraph.

107. In answer to the allegations in paragraph 107 of the Claim, the Respondents:

107.1 refer to and repeat paragraphs 95 to 106 above;

107.2 otherwise deny the allegations in the paragraph.

K RESPONSIBILITY OF THE AMP LICENSEES FOR THE AMP AUTHORISED REPRESENTATIVES

108. In answer to the allegations in paragraph 108 of the Claim, the Respondents:

108.1 refer to and repeat Sections C, F, G and H above;

108.2 admit that from time to time during the Relevant Period the AMP Authorised Representatives engaged in conduct:

108.2.1 related to the provision of a financial service within the meaning of s 917A(1)(a) of the Corporations Act;

108.2.2 on which the client could reasonably be expected to rely within the meaning of s 917A(1)(b) of the Corporations Act;

108.2.3 on which the client did in good faith rely within the meaning of s 917A(1)(c) of the Corporations Act;

108.3 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

108.4 otherwise deny the allegations in the paragraph.

109. In answer to the allegations in paragraph 109 of the Claim, the Respondents:

109.1 refer to and repeat paragraph 108 above;

109.2 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

109.3 do not know whether the Applicants in fact relied on the financial services provided by the AMP Authorised Representatives and therefore do not admit the allegations in the paragraph.

110. In answer to the allegations in paragraph 110 of the Claim, the Respondents:

110.1 refer to and repeat paragraph 7.4 above;

110.2 otherwise deny the allegations in the paragraph.

111. In answer to the allegations in paragraph 111 of the Claim, the Respondents:

111.1 refer to and repeat paragraphs 109 and 110 above;

111.2 otherwise deny the allegations in the paragraph.

L RELEVANT PERSONNEL

112. The Respondents admit the allegations in paragraph 112 of the Claim.

113. The Respondents admit the allegations in paragraph 113 of the Claim.

114. The Respondents admit the allegations in paragraph 114 of the Claim.

115. In answer to the allegations in paragraph 115 of the Claim, the Respondents:

115.1 say that whether the knowledge of Mr Green about any particular fact, matter or circumstance is attributed to AMP depends on the particular fact, matter or circumstance, the factual and legal context in which it arose, and the circumstances in which Mr Green came to have knowledge of it;

115.2 say that the Claim does not identify in paragraph 115 (or elsewhere) what knowledge said to be possessed by Mr Green is said to be attributed to AMP;

115.3 otherwise deny the allegations in the paragraph.

116. In answer to the allegations in paragraph 116 of the Claim, the Respondents:

116.1 say that whether the knowledge of Mr Regan about any particular fact, matter or circumstance is attributed to AMP, AMPFP, Charter and Hillross depends on the particular fact, matter or circumstance, the factual and legal context in which it arose, and the circumstances in which Mr Regan came to have knowledge of it;

116.2 say that the Claim does not identify in paragraph 116 (or elsewhere) what knowledge said to be possessed by Mr Regan is said to be attributed to AMP, AMPFP, Charter and Hillross;

116.3 otherwise deny the allegations in the paragraph.

117. In answer to the allegations in paragraph 117 of the Claim, the Respondents:

117.1 say that whether the knowledge of Mr Johnson about any particular fact, matter or circumstance is attributed to AMP Life depends on the particular fact, matter or circumstance, the factual and legal context in which it arose, and the circumstances in which Mr Johnson came to have knowledge of it;

117.2 otherwise deny the allegations in the paragraph.

118. In answer to the allegations in paragraph 118 of the Claim, the Respondents:

118.1 admit that Mr Green was authorised by AMP to provide written witness statements to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry;

118.2 say that the Applicants have not identified any particular admissions alleged to have been made by Mr Green, in the absence of which they cannot say whether such admissions could be attributed to AMP;

118.3 otherwise deny the allegations in the paragraph.

119. In answer to the allegations in paragraph 119 of the Claim, the Respondents:

119.1 admit that Mr Regan was authorised by AMP to provide written witness statements to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry;

119.2 say that the Applicants have not identified any particular admissions alleged to have been made by Mr Regan, in the absence of which they cannot say whether such admissions could be attributed to AMP;

119.3 otherwise deny the allegations in the paragraph.

120. In answer to the allegations in paragraph 120 of the Claim, the Respondents:

120.1 admit that Mr Johnson was authorised by AMP Life to provide a written witness statement to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry;

120.2 say that the Applicants have not identified any particular admissions alleged to have been made by Mr Johnson, in the absence of which they cannot say whether such admissions could be attributed to AMP;

120.3 otherwise deny the allegations in the paragraph.

M FUTURE OF FINANCIAL ADVICE OBLIGATIONS AND CONTRAVENTIONS

M.1 Best Interests

121. In answer to the allegations in paragraph 121 of the Claim, the Respondents:

- 121.1 admit that the 2012 Stack SOA provided by Mr Lang as an AMPFP Authorised Representative to the First Applicant was financial product advice within the meaning of s 766B(1) of the Corporations Act;
 - 121.2 admit that the 2015 Stack SOA provided by Mr Lang as an AMPFP Authorised Representative to the First Applicant was financial product advice within the meaning of s 766B(1) of the Corporations Act;
 - 121.3 admit that the 2014 Winterton SOA provided by Mr Spears as an AMPFP Authorised Representative to the Second Applicant was financial product advice within the meaning of s 766B(1) of the Corporations Act;
 - 121.4 deny that on 28 August 2014 Mr Blackshaw as a Charter Authorised Representative provided financial product advice, within the meaning of s 766B(1) of the Corporations Act, to the Third Applicant, and refer to and repeat paragraph 25 above;
 - 121.5 admit that the 2018 Brotton SOA provided by Mr Blackshaw as a Charter Authorised Representative to the Third Applicant was financial product advice within the meaning of s 766B(1) of the Corporations Act;
 - 121.6 admit that the 14 March 2001 LAFP provided by Mr Foster to the Fourth Applicant was financial product advice within the meaning of s 766B(1) of the Corporations Act;
 - 121.7 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;
 - 121.8 otherwise do not know and do not admit the allegations in the paragraph.
122. In answer to the allegations in paragraph 122 of the Claim, the Respondents:
- 122.1 refer to and repeat paragraph 121 above;
 - 122.2 admit that each advice referred to in paragraphs 121.1, 121.2, 121.3, 121.5 and 121.6 above was personal advice within the meaning of s 766B(3) of the Corporations Act;
 - 122.3 deny that on 28 August 2014 Mr Blackshaw as a Charter Authorised Representative provided personal advice, within the meaning of s 766B(3) of the Corporations Act, to the Third Applicant, and refer to and repeat paragraph 25 above;

122.4 otherwise do not know and do not admit the allegations in the paragraph.

123. In answer to the allegations in paragraph 123 of the Claim, the Respondents:

123.1 refer to and repeat paragraphs 121 and 123 above;

123.2 admit that when he provided the 2012 Stack SOA to the First Applicant, Mr Lang as an AMPFP Authorised Representative provided a financial service, within the meaning of s 766A(1) of the Corporations Act, to the First Applicant;

123.3 admit that when he provided the 2015 Stack SOA to the First Applicant, Mr Lang as an AMPFP Authorised Representative provided a financial service, within the meaning of s 766A(1) of the Corporations Act, to the First Applicant;

123.4 admit that when he provided the 2014 Winterton SOA to the Second Applicant, Mr Spears as an AMPFP Authorised Representative provided a financial service, within the meaning of s 766A(1) of the Corporations Act, to the Second Applicant;

123.5 deny that on 28 August 2014 Mr Blackshaw as a Charter Authorised Representative provided a financial service, within the meaning of s 766B(1) of the Corporations Act, to the Third Applicant, and refer to and repeat paragraph 25 above;

123.6 admit that when he provided the 2018 Brotton SOA to the Third Applicant, Mr Blackshaw as a Charter Authorised Representative provided a financial service, within the meaning of s 766A(1) of the Corporations Act, to the Third Applicant;

123.7 admit that when he provided the 14 March 2001 LAFP to the Fourth Applicant, Mr Foster provided a financial service, within the meaning of s 766A(1) of the Corporations Act, to the Fourth Applicant;

123.8 otherwise do not know and do not admit the allegations in the paragraph.

124. In answer to the allegations in paragraph 124 of the Claim, the Respondents:

124.1 refer to and repeat paragraphs 121 and 123 above;

124.2 admit that the financial services referred to in paragraphs 123.1, 123.3, 123.4, 123.6 and 123.7 above were provided to, as the case may be, the First, Second, Third and Fourth Applicants as retail clients within the meaning of s 761G of the Corporations Act;

124.3 otherwise do not know and do not admit the allegations in the paragraph.

125. In answer to the allegations in paragraph 125 of the Claim, the Respondents:

125.1 say that Div 2 of Pt 7.7A of the Corporations Act did not apply to the provision of the 2012 Stack SOA by Mr Lang to the First Applicant, or to the provision of the 14 March 2001 LAFP by Mr Foster to the Fourth Applicant;

Particulars

Section 1527 of the Corporations Act.

125.2 admit that in relation to the provision of the 2015 Stack SOA, Mr Lang was the provider within the meaning of s 961(2) of the Corporations Act;

125.3 admit that in relation to the provision of the 2014 Winterton SOA, Mr Spears was the provider within the meaning of s 961(2) of the Corporations Act;

125.4 admit that in relation to the provision of the 2018 Brotton SOA, Mr Blackshaw was the provider within the meaning of s 961(2) of the Corporations Act;

125.5 refer to and repeat paragraph 122.3 above;

125.6 otherwise do not know and do not admit the allegations in the paragraph.

126. In answer to the allegations in paragraph 126 of the Claim, the Respondents:

126.1 refer to and repeat paragraphs 121 to 125 above;

126.2 admit that s 961B(1) applied to Mr Lang in relation to the 2015 Stack SOA provided to the First Applicant;

126.3 admit that s 961B(1) applied to Mr Spears in relation to the 2014 Winterton SOA provided to the Second Applicant;

126.4 admit that s 961B(1) applied to Mr Blackshaw in relation to the 2018 Brotton SOA provided to the Third Applicant;

126.5 say that s 961B(1) applied to the provision of personal advice by AMP Authorised Representatives from 1 July 2013;

126.6 otherwise do not know and do not admit the allegations in the paragraph.

127. In answer to the allegations in paragraph 127 of the Claim, the Respondents:

127.1 refer to and repeat paragraphs 47 and 51 above;

- 127.2 say further that they are unable to plead to unparticularised allegations regarding the Applicants and unidentified Group Members;
- 127.3 otherwise deny the allegations in the paragraph.
- 128. In answer to the allegations in paragraph 128 of the Claim, the Respondents:
 - 128.1 refer to and repeat paragraphs 47, 51, 54 and 107 above;
 - 128.2 say further that they are unable to plead to unparticularised allegations regarding the Applicants and unidentified Group Members;
 - 128.3 otherwise deny the allegations in the paragraph.
- 129. In answer to the allegations in paragraph 129 of the Claim, the Respondents:
 - 129.1 say that the best interests obligation in s 961B of the Corporations Act does not prohibit the receipt of commissions by a provider;
 - 129.2 refer to and repeat paragraphs 47, 51, 122.3, 125.1 and 128 above;
 - 129.3 deny that Mr Lang failed to act in the best interests of the First Applicant in relation to the 2015 Stack SOA within the meaning of s 961B of the Corporations Act;
 - 129.4 deny that Mr Spears failed to act in the best interests of the Second Applicant in relation to the 2014 Winterton SOA within the meaning of s 961B of the Corporations Act;
 - 129.5 deny that Mr Blackshaw failed to act in the best interests of the Third Applicant in relation to the 2018 Brotton SOA within the meaning of s 961B of the Corporations Act;
 - 129.6 say that, in relation to each of the 2015 Stack SOA, the 2014 Winterton SOA and the 2018 Brotton SOA, Mr Lang, Mr Spears and Mr Blackshaw, as the case may be, acted consistently with the best interests obligations in s 961B(1) of the Corporations Act, and did each of the things in s 961B(2) of the Corporations Act, where relevant and applicable;

Particulars

- A. Mr Lang, Mr Spears and Mr Blackshaw identified the objectives, financial situations and needs of, respectively, the First Applicant, the Second Applicant and the Third Applicant that were disclosed to Mr Lang, Mr Spears and Mr Blackshaw by instructions from

these Applicants and by the subject matter of the advice sought by these Applicants.

- B. Mr Lang, Mr Spears and Mr Blackshaw identified the subject matter of the advice sought by, respectively, the First Applicant, the Second Applicant and the Third Applicant, and the objectives, financial situation and needs of these Applicants that would reasonably be considered as relevant to advice sought on the subject matter.
- C. Mr Lang, Mr Spears and Mr Blackshaw had the expertise to provide, respectively, the 2015 Stack SOA, the 2014 Winterton SOA and the 2018 Brotton SOA.
- D. Mr Spears and Mr Blackshaw conducted a reasonable investigation into financial products that might achieve, respectively, the Second Applicant's and the Third Applicant's objectives and needs as relevant to the advice on that subject matter and an assessment of the information gathered in the investigation.
- E. Mr Lang, Mr Spears and Mr Blackshaw based all judgments in advising, respectively, the First Applicant, the Second Applicant and the Third Applicant on the relevant circumstances of the relevant Applicant.

129.7 deny that Mr Lang, Mr Spears and Mr Blackshaw failed to keep a record of, respectively, the 2015 Stack SOA, the 2014 Winterton SOA and the 2018 Brotton SOA;

129.8 say that they are otherwise unable to plead to unparticularised allegations regarding the Applicants and unidentified Group Members;

129.9 otherwise deny the allegations in the paragraph.

130. In answer to the allegations in paragraph 130 of the Claim, the Respondents:

130.1 say that a reasonable investigation into financial products within the meaning of s 961B(2)(e) of the Corporations Act does not require an investigation into every product that is available on the market;

130.2 say that a reasonable investigation into financial products within the meaning of s 961B(2)(e) of the Corporations Act requires a provider to scope their product selection based on the needs and objectives of their client and to exercise professional judgment in determining whether this task should go beyond the provider's approved product list;

130.3 deny that, in the 2015 Stack SOA, Mr Lang recommended that the First Applicant renew and continue to hold AMP Flexible Super – Flexible Protection at Excess Premiums;

130.4 refer to and repeat paragraphs 67.2 to 67.3 above;

130.5 say that in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraphs 130.2, 130.3 and 130.6(c) is embarrassing and liable to be struck out;

130.6 say that, in relation to the 2015 Stack SOA, Mr Lang disclosed the premiums charged for AMP Flexible Super – Flexible Protection to the First Applicant;

Particulars

2015 Stack SOA at pp 7-8, 14, 18, 26-27, 38.

130.7 refer to and repeat Sections G and J and paragraphs 128 and 129.6 above;

130.8 say that they are otherwise unable to plead to unparticularised allegations regarding the First Applicant and unidentified Group Members;

130.9 otherwise deny the allegations in the paragraph.

131. In answer to the allegations in paragraph 131 of the Claim, the Respondents:

131.1 refer to and repeat Section H and paragraph 125.1 above;

131.2 say that, if no personal advice was provided during the Relevant Period, s 961B of the Corporations Act did not apply;

131.3 say that they are unable to plead to unparticularised allegations regarding the Second and Fourth Applicants and unidentified Group Members;

131.4 otherwise deny the allegations in the paragraph.

132. In answer to the allegations in paragraph 132 of the Claim, the Respondents refer to and repeat paragraphs 127-131 above and otherwise deny the allegations in the paragraph.

M.2 Conflicts of Interests

133. In answer to the allegations in paragraph 133 of the Claim, the Respondents refer to and repeat paragraphs 127 and 128 above, and otherwise deny the allegations in the paragraph.

134. In answer to the allegations in paragraph 134 of the Claim, the Respondents:

134.1 refer to and repeat paragraphs 121 to 125 and 132 above;

134.2 say that s 961J(1) of the Corporations Act applied to the provision of personal advice by AMP Authorised Representatives from 1 July 2013;

134.3 admit that s 961J(1) of the Corporations Act applied to Mr Lang in relation to the 2015 Stack SOA provided to the First Applicant;

134.4 admit that s 961J(1) of the Corporations Act applied to Mr Spears in relation to the 2014 Winterton SOA provided to the Second Applicant;

134.5 admit that s 961J(1) of the Corporations Act applied to Mr Blackshaw in relation to the 2018 Brotton SOA provided to the Third Applicant;

134.6 deny that s 961J(1) of the Corporations Act applied to Mr Foster in relation to the 14 March 2001 LAFP provided to the Fourth Applicant;

134.7 otherwise deny the allegations in the paragraph.

135. In answer to the allegations in paragraph 135 of the Claim, the Respondents:

135.1 say that a provider does not breach s 961J of the Corporations Act merely by accepting commissions;

135.2 say that, in relation to the 2015 Stack SOA, Mr Lang disclosed the commissions in relation to AMP Flexible Super – Flexible Protection to the First Applicant;

Particulars

A. 2015 Stack SOA at pp. 39-40;

B. U-First Financial Solutions Pty Ltd, Financial Services and Credit Guide, version 10.10i dated 15 September 2015, AMF.1005.0020.0104 at .0114 & .0120.

135.3 say that, in relation to the 2014 Winterton SOA, Mr Spears disclosed the commissions in relation to AMP Flexible Super – Flexible Protection to the Second Applicant;

Particulars

A. 2014 Winterton SOA at pp. 17, 20, 22-23;

- B. Bayside Financial Planners Pty Ltd, Financial Services and Credit Guide, version 10.0f dated 1 July 2014, AMF.3100.0002.0804 at .0814, .0821 & .0824.

135.4 say that, in relation to the 2018 Brotton SOA, Mr Blackshaw disclosed the commissions in relation to MyNorth Pension – Protected Growth Guarantee;

Particulars

- A. 2018 Brotton SOA at p. 21;
- B. Precept Financial Services, Financial Services and Credit Guide, version 5.0 dated 10 September 2018, AMF.3100.0001.6173 at pp. 7 & 29.

135.5 refer to and repeat paragraphs 47, 55, 122.3, 125.1, 127 and 129.7 above;

135.6 deny that, in relation to the provision of the 2015 Stack SOA, Mr Lang acted contrary to s 961J(1) of the Corporations Act;

135.7 deny that, in relation to the provision of the 2014 Winterton SOA, Mr Spears acted contrary to s 961J(1) of the Corporations Act;

135.8 deny that, in relation to the provision of the 2018 Brotton SOA, Mr Blackshaw acted contrary to s 961J(1) of the Corporations Act;

135.9 say that they are unable to plead to unparticularised allegations regarding the Applicants and unidentified Group Members;

135.10 otherwise deny the allegations in the paragraph.

136. In answer to the allegations in paragraph 136 of the Claim, the Respondents:

136.1 say that, in the 2015 Stack SOA, Mr Lang recommended that the First Applicant renew and continue to hold AMP Flexible Super – Flexible Protection;

136.2 refer to and repeat paragraphs 67.2 and 67.3 above;

136.3 say that in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraphs 136.2 and 136.7(c) is embarrassing and liable to be struck out;

136.4 refer to and repeat Sections G and J and paragraphs 128 and 130.6 above;

136.5 say that they are unable to plead to unparticularised allegations regarding the First Applicant and unidentified Group Members;

136.6 otherwise deny the allegations in the paragraph.

137. In answer to paragraph 137 of the Claim, the Respondents:

137.1 refer to and repeat Section H and paragraph 125.1 above;

137.2 say that, if no personal advice was provided during the Relevant Period, s 961J of the Corporations Act did not apply;

137.3 say otherwise that they are unable to plead to unparticularised allegations regarding the Second and Fourth Applicants and unidentified Group Members;

137.4 otherwise deny the allegations in the paragraph.

138. In answer to the allegations in paragraph 138 of the Claim, the Respondents refer to and repeat paragraphs 133 to 137 above and otherwise deny the allegations in the paragraph.

M.3 Failure to Take Reasonable Steps

139. In answer to the allegations in paragraph 139 of the Claim, the Respondents:

139.1 admit that, during the Relevant Period, the AMP Licensees were under the obligation in s 961L of the Corporations Act to take reasonable steps to ensure that their AMP Authorised Representatives complied with ss 961B(1) and 961J(1) of the Corporations Act;

139.2 otherwise deny the allegations in the paragraph.

140. In answer to the allegations in paragraph 140 of the Claim, the Respondents:

140.1 refer to and repeat paragraphs ~~59-60, 63-69, 70-85, 47A, 51A, 54A,~~ 86-94 and 95-107 above;

140.2 say that no particulars of knowledge have been provided;

140.3 otherwise deny the allegations in the paragraph.

141. In answer to the allegations in paragraph 141 of the Claim, the Respondents:

141.1 refer to and repeat paragraphs ~~59-60, 63-69, 70-85, 47A, 51A, 54A,~~ 86-94, 95-107, 129-131, 135-137 and 140 above;

141.2 say that even if:

- a. the AMP Licensees had systems and processes in place for the remuneration of the AMP Authorised Representatives, which had the features in paragraphs 47A.1 to 47A.4 of the Claim (which is denied);
- b. 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 features in paragraphs 51A.1 to 51A.4 of the Claim (which is denied);
- c. the policies, training, supervision and monitoring systems and processes described in paragraphs 86 to 93 had the some or all of the features referred to in paragraph 94 of the Claim (which is denied);
- d. 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 Commissions as is alleged in paragraph 91 of the Claim (which is denied),

that did not mean that 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 for the purposes of s 961L of the Corporations Act;

141.3 otherwise deny the allegations in the paragraph.

142. In answer to the allegations in paragraph 142 of the Claim, the Respondents:

142.1 refer to and repeat paragraphs 47A, 51A, 54A, 67.2, 67.3, 130, and 136 and 141 above;

142.2 say that in the absence of proper particularisation of what is meant by "substantially equivalent" and "better" the pleading in paragraphs 142.1 to 142.4 is embarrassing and liable to be struck out;

142.3 say otherwise that they are unable to plead to unparticularised allegations regarding the First Applicant and unidentified Group Members;

142.4 otherwise deny the allegations in the paragraph.

143. In answer to the allegations in paragraph 143 of the Claim, the Respondents: refer to and repeat paragraphs 141 to 142 above and otherwise deny the allegations in paragraph.

M.4 Loss and Damage

144. In answer to the allegations in paragraph 144 of the Claim, the Respondents:

144.1 refer to and repeat paragraphs 1.2, 132, 138 and 143 above;

144.2 say that, in the event that any contravention of ss 961B(1), 961J(1) or 961L of the Corporations Act is established (which is denied), no loss or damage was suffered as a result of the contravention;

144.3 say that if, which is denied, the Respondents are liable to compensate the Applicants or any of the Group Members for any loss or damage alleged by way of fees or premiums paid from superannuation funds, the relevant statutory scheme requires any and all such compensation to be paid into the relevant person's superannuation balance, to ensure there is no de facto release of preserved benefits, including by the payment of sums to any third party litigation funder;

144.4 say that any Claim for loss or damage by the Applicants or Group Members is time barred to the extent that the alleged contravention of ss 961B, 961J or 961L of the Corporations Act occurred more than six years prior to the date on which the proceeding commenced;

Particulars

Section 961M(6) of the Corporations Act.

144.5 say otherwise that they are unable to plead to unparticularised allegations regarding the First Applicant and unidentified Group Members;

144.6 otherwise deny the allegations in the paragraph.

145. In answer to the allegations in paragraph 145 of the Claim, the Respondents:

145.1 admit that if, during the Relevant Period, there was a contravention of a provision in Pt 7.7A of the Corporations Act by an AMP Authorised Representative, an AMP Licensee was the responsible licensee within the meaning of s 961P(a) of the

Corporations Act, if the AMP Authorised Representative who contravened the provision was an Authorised Representative only of that AMP Licensee;

145.2 otherwise deny the allegations in the paragraph

146. In answer to the allegations in paragraph 146 of the Claim, the Respondents:

146.1 refer to and repeat paragraphs 144 to 145 above;

146.2 otherwise deny the allegations in the paragraph.

N ANTI-AVOIDANCE CONTRAVENTIONS

147. The Respondents do not plead to the allegations in paragraph 147 of the Claim as it makes no allegations against them.

148. The Respondents admit the allegations in paragraph 148 of the Claim.

149. In answer to the allegations in paragraph 149 of the Claim, the Respondents:

149.1 say that from 1 July 2013, Commissions on products other than insurance products and under arrangements in place as at 30 June 2013, were grandfathered (**Grandfathered Commissions**);

149.2 say that in the AMP Practice Proposition Steering Committee paper dated 24 May 2013, it was stated that, from 1 July 2013, when an AMP Authorised Representative changed licensee or an AMP Authorised Representative with a book of clients changed licensee, there was a break in the relationship that paid a Grandfathered Commission, and any Grandfathered Commissions would cease;

Particulars

AMP Practice Proposition Steering Committee paper dated 24 May 2013, page 13.

149.3 otherwise deny the allegations in the paragraph.

150. In answer to the allegations in paragraph 150 of the Claim, the Respondents:

150.1 admit that after 1 July 2013, the AMP Licensees received Grandfathered Commissions;

150.2 say further that the Grandfathered Commissions received by the AMP Licensees after 1 July 2013 were authorised by law;

Particulars

Subdivision 5 of Division 4 of Part 7.7A of the Corporations Regulations
(which was repealed with effect from 1 January 2021).

- 150.3 otherwise deny the allegations in the paragraph.
151. In answer to the allegations in paragraph 151 of the Claim, the Respondents:
- 151.1 refer to and repeat paragraphs 45 to 47 above;
- 151.2 otherwise deny the allegations in the paragraph.
152. The Respondents admit the allegations in paragraph 152 of the Claim.
153. The Respondents deny the allegations in paragraph 153 of the Claim and say further that:
- 153.1 AMP Planner Register Company Pty Ltd (**Register Co**) was incorporated on 26 February 2008;
- 153.2 on 3 April 2008, AMPFP provided written authorisation to Register Co, for the purposes of Chapter 7 of the Corporations Act, to deal in those financial products referred to in clause 1(b) of the Authorisation section of AMPFP's AFSL and in the manner referred to in that clause (but did not authorise Register Co to provide any financial product advice);
- 153.3 on 3 April 2008, Hillross provided written authorisation to Register Co, for the purposes of Chapter 7 of the Corporations Act, to deal in those financial products referred to in clause 1(b) of the Authorisation section of Hillross' AFSL and in the manner referred to in that clause (but did not authorise Register Co to provide any financial product advice);
- 153.4 on 27 June 2013, Charter (which was acquired by AMP on 30 March 2011) provided written authorisation to Register Co, for the purposes of Chapter 7 of the Corporations Act, to deal in those financial products referred to in clause 1(b) of the Authorisation section of Charter's AFSL and in the manner referred to in that clause (but did not authorise Register Co to provide any financial product advice);
- 153.5 otherwise deny the allegations in the paragraph.
154. In answer to the allegations in paragraph 154 of the Claim, the Respondents:
- 154.1 refer to and repeat paragraph 153 above;

154.2 otherwise deny the allegations in the paragraph.

155. In answer to the allegations in paragraph 155 of the Claim, the Respondents:

155.1 refer to and repeat paragraph 153 above;

155.2 otherwise deny the allegations in the paragraph.

156. In answer to the allegations in paragraph 156 of the Claim, the Respondents:

156.1 refer to and repeat paragraphs 148 to 155 above;

156.2 otherwise deny the allegations in the paragraph.

157. In answer to the allegations in paragraph 157 of the Claim, the Respondents:

157.1 refer to and repeat paragraph 147 to 156 above;

157.2 otherwise deny the allegations in the paragraph.

158. In answer to the allegations in paragraph 158 of the Claim, the Respondents:

158.1A refer to and repeat paragraph 1.2 above;

158.1 say that they are unable to plead to unparticularised allegations regarding the Applicants and unidentified Group Members;

158.2 otherwise deny the allegations in the paragraph.

159. The Respondents deny the allegations in paragraph 159 of the Claim.

O FIDUCIARY OBLIGATIONS AND BREACH

160. The Respondents do not plead to the allegations in paragraph 160 of the Claim as it makes no allegation against them.

161. In answer to the allegations in paragraph 161 of the Claim, the Respondents:

161.1 say that the Applicants have failed to properly plead or particularise the scope of any alleged fiduciary duty owed to them or to any other Group Members, such that paragraph 161 of the Claim is embarrassing;

161.2 refer to and repeat paragraphs 7, 55, 56 and 61 above;

- 161.3 say further, and in any event, that the question of whether a fiduciary duty was owed by any AMP Licensee or AMP Authorised Representative to any given Applicant or Group Member is an individual issue, turning on facts and circumstances particular to the relationship between the AMP Licensee or AMP Authorised Representative and the Applicant or Group Member in question;
- 161.4 otherwise deny the allegations in the paragraph.
162. In answer to the allegations in paragraph 162 of the Claim, the Respondents:
- 162.1 refer to and repeat paragraphs 7, 61, 63 to 65 and 161 above;
- 162.2 say otherwise that they are unable to plead to unparticularised allegations regarding the First Applicant and unidentified Group Members;
- 162.3 otherwise deny the allegations in the paragraph.
163. In answer to the allegations in paragraph 163 of the Claim, the Respondents:
- 163.1 refer to and repeat paragraph 127 above;
- 163.2 otherwise deny the allegations in the paragraph.
164. In answer to the allegations in paragraph 164 of the Claim, the Respondents:
- 164.1 refer to and repeat paragraph 128 above;
- 164.2 otherwise deny the allegations in the paragraph.
165. In answer to the allegations in paragraph 165 of the Claim, the Respondents:
- 165.1 refer to and repeat paragraphs 135 to 137 and 161 to 163 above;
- 165.2 otherwise deny the allegations in the paragraph.
166. In answer to the allegations in paragraph 166 of the Claim, the Respondents:
- 166.1 refer to and repeat paragraphs 135 to 137, 161 to 162 and 164 above;
- 166.2 otherwise deny the allegations in the paragraph.
167. In answer to the allegations in paragraph 167 of the Claim, the Respondents:
- 167.1 refer to and repeat paragraphs 7, 55, 56, 61 and 161 to 162 above;

167.2 otherwise deny the allegations in the paragraph.

168. In answer to the allegations in paragraph 168 of the Claim, the Respondents:

168.1 refer to and repeat paragraphs 7, 61, 63 to 65 and 161 to 162 above;

168.2 otherwise deny the allegations in the paragraph.

169. In answer to the allegations in paragraph 169 of the Claim, the Respondents:

169.1 refer to and repeat paragraphs 135 to 137, 161 to 163 and 165 above;

169.2 otherwise deny the allegations in the paragraph.

170. In answer to the allegations in paragraph 170 of the Claim, the Respondents refer to and repeat paragraphs 135 to 137, 161 to 162, 164 and 166 above and otherwise deny the allegations in the paragraph.

171. In answer to the allegations in paragraph 171 of the Claim, the Respondents:

171.1 refer to and repeat paragraphs 1.2, 108 to 111, 169 and 170 above;

171.2 say that paragraph 171 does not contain an allegation about conduct of a representative to which Div 6 of Pt 7.6 of the Corporations Act applies;

Particulars

Section 917A of the Corporations Act.

171.3 otherwise deny the allegations in the paragraph.

172. In answer to the allegations in paragraph 172 of the Claim, the Respondents:

172.1 refer to and repeat paragraphs 161 to 171 above;

172.2 say that any Claim of account of the First, Second and Third Applicants is time barred to the extent that it accrued more than six years prior to the date on which this proceeding was commenced;

Particulars

Limitation of Actions Act 1974 (Qld) s 10; Limitation of Actions Act 1958 (Vic) s 5(2); Limitation Act 2005 (WA) s 13.

172.3 say further that they will rely on any applicable limitation period in relation to the Claims of Group Members;

172.4 otherwise deny the allegations in the paragraph.

173. In answer to the allegations in paragraph 173 of the Claim, the Respondents:

173.1A refer to and repeat paragraph 1.2 above;

173.1 say that the First and Second Applicants have not suffered loss or damage that may be Claimed against the Respondents as the premiums and fees paid on AMP Flexible Super – Flexible Protection held by those Applicants were paid from their respective superannuation funds and they have no present or immediate right to payment from those funds;

173.2 say further that to the extent an insurance premium or fee for any Group Member's financial product was paid from the Group Member's superannuation fund, that Group Member has no present or immediate right to payment from their superannuation fund and has not suffered any relevant loss or damage that may be Claimed against the Respondents;

173.3 say further, if, which is denied, the Respondents are liable to compensate the Applicants or any of the Group Members for any loss or damage alleged by way of fees or premiums paid from superannuation funds, the relevant statutory scheme requires any and all such compensation to be paid into the relevant person's superannuation balance, to ensure there is no de facto release of preserved benefits, including by the payment of sums to any third party litigation funder;

173.4 otherwise deny the allegations in the paragraph.

174. The Respondents deny the allegations in paragraph 174 of the Claim.

P KNOWING RECEIPT BY AMP LIFE

175. In answer to the allegations in paragraph 175 of the Claim, the Respondents:

175.1 refer to and repeat paragraphs 161 to 162 above;

175.2 say that "the material facts giving rise to the existence of the fiduciary duties" and that "the material facts giving rise to the breaches of those fiduciary duties", as referred to in paragraph 175, have not been pleaded or particularised, despite requests from the Respondents' solicitors;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman dated 1 April 2021;
- B. Letter from Piper Alderman to King & Wood Mallesons dated 11 April 2021.

175.3 say that the pleading in relation to AMP Life's knowledge is deficient because it does not give adequate particulars of the facts and circumstances from which AMP Life ought to have acquired the alleged knowledge, nor does the pleading identify the identity of any officer(s) or employee(s) of AMP Life who allegedly possessed this knowledge;

Particulars

- A. Federal Court Rules 2011 (Cth) s 16.43;
- B. Letter from King & Wood Mallesons to Piper Alderman dated 11 March 2021;
- C. Letter from Piper Alderman to King & Wood Mallesons dated 11 April 2021.

175.4 on the basis of the above, say the paragraph is vague and defective and liable to be struck out;

175.5 say further and in any event that they are unable to plead to unparticularised allegations regarding the Applicants and unidentified Group Members;

175.6 otherwise deny the allegations in the paragraph.

176. In answer to the allegations in paragraph 176 of the Claim, the Respondents:

176.1 say that "the circumstances that would have indicated to an honest and reasonable person the material facts referred to in paragraphs 175.1 and 175.2", referred to in paragraph 176, have not been pleaded or particularised, despite requests from the Respondents' solicitors;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman dated 1 April 2021;
- B. Letter from Piper Alderman to King & Wood Mallesons dated 11 April 2021.

176.2 refer to and repeat paragraph 175.3 above;

176.3 on the basis of the above, say the paragraph is vague and defective and liable to be struck out;

176.4 otherwise deny the allegations in the paragraph.

177. In answer to the allegations in paragraph 177 of the Claim, the Respondents:

177.1 refer to and repeat paragraphs 66 to 67, 69, 175 and 176 above;

177.2 say further and in any event that they are unable to plead to unparticularised allegations regarding the First Applicant and unidentified Group Members;

177.3 otherwise deny the allegations in the paragraph.

178. In answer to the allegations in paragraph 178 of the Claim, the Respondents:

178.1 refer to and repeat paragraphs 1.2, 66 to 67, 69, 175 and 176 above;

178.2 otherwise deny the allegations in the paragraph.

179. In answer to the allegations in paragraph 179 of the Claim, the Respondents:

179.1 refer to and repeat paragraphs 175, 176 and 178 above;

179.2 otherwise deny the allegations in the paragraph.

Q OSF CONTRACTUAL BREACH

180. The Respondents do not plead to the allegations in paragraph 180 of the Claim as it makes no allegations against them.

181. In answer to the allegations in paragraph 181 of the Claim, the Respondents:

181.1 refer to and repeat paragraphs 71 to 76 above;

181.2 otherwise deny the allegations in the paragraph.

182. In answer to the allegations in paragraph 182 of the Claim, the Respondents:

182.1 in respect of paragraph 182.1:

182.1.1 refer to and repeat paragraph 77 above;

182.1.2 otherwise deny the allegations in the paragraph;

182.2 in respect of paragraph 182.2:

182.2.1 refer to and repeat paragraphs 132 and 138 above;

182.2.2 otherwise deny the allegations in the paragraph;

182.3 in respect of paragraph 182.3:

182.3.1 refer to and repeat paragraph 77 above;

182.3.2 otherwise deny the allegations in the paragraph;

182.4 say further, in respect of the whole of the paragraph, that they are unable to plead to unparticularised allegations regarding the Second and Fourth Applicants and unidentified Group Members.

183. In answer to the allegations in paragraph 183 of the Claim, the Respondents:

183.1 refer to and repeat paragraphs 108 to 111 and 182 above;

183.2 otherwise deny the allegations in the paragraph.

184. In answer to ~~The Respondents deny~~ the allegations in paragraph 184 of the Claim, the Respondents:

184.1 refer to and repeat paragraph 1.2 above;

184.2 otherwise deny the allegations in the paragraph.

185. The Respondents deny the allegations in paragraph 185 of the Claim.

R UNCONSCIONABLE CONDUCT

186. The Respondents do not plead to the allegations in paragraph 186 of the Claim as it makes no allegations against them.

187. In answer to the allegations in paragraph 187 of the Claim, the Respondents:

187.1 refer to and repeat paragraphs 71 to 76, 126, 134 and 181 above;

187.2 otherwise deny the allegations in the paragraph.

188. In answer to the allegations in paragraph 188 of the Claim, the Respondents:

- 188.1 say that whether or not the Commissions could reasonably be expected to influence the provision of ongoing personal advice to clients by AMP Authorised Representatives with respect to Commissioned Products requires a consideration of matters relevant to the particular client and the particular AMP Authorised Representative, including whether:
- 188.1.1 the AMP Authorised Representative providing the personal advice was to receive the commission as a result of providing the personal advice;
- 188.1.2 there was an alternative but comparable and otherwise appropriate product reasonably available with a different level of commission payable;
- 188.2 refer to and repeat paragraphs 47.2 and 47.3 above;
- 188.3 otherwise deny the allegations in the paragraph.
189. The Respondents deny the allegations in paragraph 189 of the Claim.
190. In answer to the allegations in paragraph 190 of the Claim, the Respondents:
- 190.1 refer to and repeat paragraphs 73 and 181 above;
- 190.2 admit that to the extent Mr Spears contracted with the Second Applicant to provide ongoing services, including ongoing personal advice, in respect of the Second Applicant's AMP Flexible Super – Flexible Protection (as referred to in paragraphs 72.1.2 to 72.1.4 above), Mr Spears was engaging in conduct in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act;
- 190.3 say that there was no contract with the Fourth Applicant to provide ongoing services, including ongoing personal advice to him;
- 190.4 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;
- 190.5 otherwise deny the allegations in the paragraph
191. In answer to the allegations in paragraph 191 of the Claim, the Respondents:
- 191.1 refer to and repeat paragraph 190 above;

- 191.2 admit that, to the extent the conduct alleged in paragraph 190 of the Claim is admitted in paragraph 190 above, that conduct was in trade or commerce within the meaning of s 12BA(1) of the ASIC Act;
- 191.3 otherwise deny the allegations in the paragraph.
192. The Respondents deny the allegations in paragraph 192 of the Claim and refer to and repeat Section K above.
193. In answer to the allegations in paragraph 193 of the Claim, the Respondents:
- 193.1 refer to and repeat paragraphs 186 to 191 above;
- 193.2 say that whether any given conduct was unconscionable is a matter which depends on the individual circumstances of the Claim;
- 193.3 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;
- 193.4 admit that s 12CB of the ASIC Act was in force during the Relevant Period;
- 193.5 otherwise deny the allegations in the paragraph.
194. The Respondents refer to and repeat paragraph 193 and otherwise deny the allegations in paragraph 194 of the Claim.
195. The Respondents refer to and repeat paragraph 193 and otherwise deny the allegations in paragraph 195 of the Claim.
196. The Respondents refer to and repeat paragraph 193 and otherwise deny the allegations in paragraph 196 of the Claim.
197. The Respondents refer to and repeat paragraphs 1.2 and 193 and otherwise deny the allegations in paragraph 197 of the Claim.
198. The Respondents refer to and repeat paragraph 193 and otherwise deny the allegations in paragraph 198 of the Claim.
199. The Respondents refer to and repeat paragraphs 1.2 and 193 and otherwise deny the allegations in paragraph 199 of the Claim.

S MISLEADING OR DECEPTIVE CONDUCT


200. The Respondents do not plead to the allegations in paragraph 200 as it makes no allegations against them.
201. In answer to the allegations in paragraph 201 of the Claim, the Respondents:
- 201.1 refer to and repeat paragraphs 71 and 76 above;
- 201.2 otherwise deny the allegations in the paragraph.
202. In answer to the allegations in paragraph 202 of the Claim, the Respondents:
- 202.1 refer to and repeat paragraphs 64 and 68 above;
- 202.2 otherwise deny the allegations in the paragraph.
203. In answer to the allegations in paragraph 203 of the Claim, the Respondents:
- 203.1 refer to and repeat paragraphs 64, 67.2 to 67.3 and 68 above;
- 203.2 otherwise deny the allegations in the paragraph.
204. In answer to the allegations in paragraph 204 of the Claim, the Respondents:
- 204.1 refer to and repeat paragraph 203 above;
- 204.2 otherwise deny the allegations in the paragraph.
205. The Respondents deny the allegations in paragraph 205 of the Claim.
206. The Respondents deny the allegations in paragraph 206 of the Claim.
207. The Respondents deny the allegations in paragraph 207 of the Claim.
208. In answer to ~~The Respondents deny~~ the allegations in paragraph 208 of the Claim, the Respondents:
- 208.1 refer to and repeat paragraph 1.2 above;
- 208.2 otherwise deny the allegations in the paragraph.
209. In answer to the allegations in paragraph 209 of the Claim, the Respondents:

209.1 say that in the event that any contravention of s 18 of the ACL, s 12DA of the ASIC Act, or s 1014H of the Corporations Act has occurred (which is denied), no loss or damage was suffered because of that contravention;

209.2 otherwise deny the allegations in the paragraph.

210. In answer to the entire Claim, the Respondents deny any entitlement of the Applicants and Group Members to the relief sought in the Originating Application or at all.

Date: ~~17 May 2024~~ 25 February 2022



Signed by Amanda Jane Engels
Lawyer for the Respondents

This pleading was prepared by Amanda Jane Engels, lawyer, and settled by Wendy Harris QC and Emma Bathurst of Counsel.

Certificate of lawyer

I, Amanda Jane Engels, certify to the Court that, in relation to the defence to the Amended Statement of Claim filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~17 May 2021~~ 25 February 2022



Signed by Amanda Jane Engels
Lawyer for the Respondents

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