

NOTICE OF FILING

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File Title: NIGEL PETER STACK & ORS v AMP FINANCIAL PLANNING PTY LIMITED & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



Defence to the Further Amended Statement of Claim

Filed pursuant to order 1 of the orders of Beach J made on 7 March 2024

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 Further Amended Statement of Claim filed by the Applicants on 15 December 2023 (**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;
 - 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;

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 Resolution Life Australasia Limited (ACN 079 300 379), the Respondents.

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- 1.2A deny that those persons on behalf of whom the Applicants purport to bring the proceeding who received “personal advice” from an “authorised representative” have any cause of action against the Respondents as pleaded in the Claim prior to Chapter 7 of the Corporations Act, as inserted by the *Financial Services Reform Act 2001* (Cth) (**FSR Act**), becoming operational;

Particulars

Corporations Act, Chapter 10, Part 10.2, Division 1.

- 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 s 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* (NT);
 - (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);
 - (vii) sections 10(1) and 10(2) of the *Limitation of Actions Act 1974* (Qld);
 - (viii) section 35 of the *Limitation of Actions Act 1936* (SA).

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 the allegations in the paragraph.

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 the allegations in 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.

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. In answer to the allegations in paragraph 5 of the Claim, the Respondents:

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**);

5.1A say that:

5.1A.1 AMPFP was registered on 1 March 1991 and commenced holding an AFSL on 1 January 2004;

5.1A.2 Charter was registered on 8 August 1985 and commenced holding an AFSL on 1 January 2004;

5.1A.3 Hillross was registered on 18 June 1987 and commenced holding an AFSL on 1 January 2004;

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;

5.3 otherwise admit the allegations in the paragraph.

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

6.1 refer to and repeat paragraph 5;

6.2 say further that the financial services licensing regime under Chapter 7 of the Corporations Act including the term “authorised representative” was introduced by the FSR Act;

Particulars

Corporations Act, Chapter 10, Part 10.2, Division 1.

6.3 otherwise admit the allegations in the paragraph.

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:

7.1A refer to and repeat paragraphs 5 and 6 above;

7.1 otherwise 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 s 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 the allegations in paragraph 9 of the Claim.
- 9A. In answer to the allegations in paragraph 9A of the Claim, the Respondents:
- 9A.1 admit the allegation in paragraph 9A.1;
- 9A.2 in respect of the allegation in paragraph 9A.2 of the Claim, say that:
- 9A.2.1 during the period 4 September 2015 to the end of the Relevant Period, from time to time, certain directors were directors of each of the AMP Licensees;
- 9A.2.2 from the start of the Relevant Period until 1 July 2020, from time to time, certain directors were directors of each of AMP and AMP Life;
- 9A.2.3 none of the AMP Licensees had a common director with AMP;
- 9A.2.4 none of the AMP Licensees had a common director with AMP Life.
- 9A.3 in respect of the allegation in paragraph 9A.3 of the Claim, say that:

- 9A.3.1 the AMP Licensees on occasion held concurrent board meetings adopting a common board pack which were distributed to attendees approximately quarterly;
- 9A.3.2 until 29 November 2018, AMP and AMP Life on occasion held concurrent board meetings adopting a common board pack which were distributed to attendees approximately quarterly;
- 9A.3.3 the AMP Licensees and AMP did not hold concurrent board meetings;
- 9A.3.4 the AMP Licensees and AMP Life did not hold concurrent board meetings;
- 9A.4 in respect of the allegations in paragraph 9A.4 of the Claim, say that paragraph 9A.4 of the Claim is embarrassing and liable to be struck out, and on that basis deny the allegations in the subparagraph;
- 9A.5 in respect of the allegations in paragraph 9A.5 of the Claim:
 - 9A.5.1 refer to and repeat paragraph 9A.2 above;
 - 9A.5.2 say that the phrase “across each entity” in paragraph 9A.5 of the Claim is embarrassing and liable to be struck out, and on that basis deny allegations in the subparagraph;
- 9A.6 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 25 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” 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 referred to in paragraph 10.1 above was recorded in a Statement of Advice dated 13 July 2012 (**2012 Stack SOA**) and which the Respondents rely on for its full terms;
- 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 ss 961B(1) and 961J of the Corporations Act; and
- 10.3.2 the prohibition on conflicted remuneration under ss 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:
- 11.1A refer to and repeat paragraph 10 above;
- 11.1 say that on 25 July 2012 the First Applicant applied for the superannuation product called “AMP Flexible Super” and “Flexible Protection” insurance cover within that product (collectively, **AMP Flexible Super – Flexible Protection**);
- 11.2 say that Flexible Protection insurance cover was not a separate product acquired by the First Applicant from the product issuer but rather the insurance cover was provided under an insurance policy issued by AMP Life to AMP Superannuation Limited (now AMP Superannuation Pty Limited) (**ASL**);
- 11.2A say that Flexible Protection insurance cover was added on 7 August 2012 to the First Applicant’s AMP Flexible Super account;
- 11.3A say that:
- 11.3A.1 the First Applicant held the AMP Flexible Super account from 25 July 2012 until 3 January 2019;
- 11.3A.2 on 1 July 2013, the benefits of the First Applicant in his AMP Flexible Super account were transferred by way of successor fund transfer from the AMP Superannuation Savings Trust (**ASST**) to the AMP Retirement Trust (**ART**);

- 11.3 say that there was Flexible Protection insurance cover on the First Applicant's AMP Flexible Super account from 7 August 2012 to 3 January 2019;
- 11.4 otherwise do not know and do not admit the allegations in the paragraph.
12. In answer to the allegations in paragraph 12 of the Claim, the Respondents:
- 12.1 refer to and repeat paragraph 11 above and paragraphs 15, 37 and 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 Flexible Protection insurance cover within the AMP Flexible Super product held by the First Applicant became grandfathered on and from 1 July 2013;
- 12.3 otherwise admit the allegations in the paragraph.
13. In answer to the allegations in paragraph 13 of the Claim, the Respondents:
- 13.1 refer to and repeat paragraph 11 above;
- 13.2 say that the First Applicant received personal advice from Mr Lang on 13 June 2013 (**June 2013 Advice**) that the First Applicant's insurances within superannuation (which at that time included Flexible Protection insurance cover within AMP Flexible Super) remained suitable and that there was no recommendation to change them at that time;
- 13.3 say that the First Applicant received personal advice from Mr Lang on 14 July 2014 (**July 2014 Advice**) having been instructed by the First Applicant that there had been "no changes in life situation to warrant any changes to personal insurances";
- 13.4 otherwise deny the allegations in the paragraph.
- 13A. In answer to the allegations in paragraph 13A of the Claim, the Respondents:
- 13A.1 refer to and repeat paragraph 11 above;
- 13A.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 retain his Flexible Protection insurance cover within AMP Flexible

Super at the same level of cover for “Income Protection” and to reduce the level of cover for “Term Life/ TPD”;

- 13A.3 say that the advice provided by Mr Lang was recorded in a Statement of Advice dated 18 December 2015 (**2015 Stack SOA**) on which the Respondents rely for its full terms;

Particulars

Statement of advice dated 18 December 2015 (AMF.2001.0001.0537).

- 13A.4 otherwise deny the allegations in the paragraph.

13B. In answer to the allegations in paragraph 13B of the Claim, the Respondents:

- 13B.1 refer to and repeat paragraph 11 above;

- 13B.2 say that the First Applicant received personal advice from Mr Lang on 14 September 2016 (**September 2016 Advice**);

- 13B.3 say that:

13B.3.1 the First Applicant outlined that there were no changes to his circumstances and that he was not seeking any changes to his insurances;

13B.3.2 on that basis the First Applicant and Mr Lang agreed that no additional review of the insurances was required at that time;

- 13B.4 otherwise deny the allegations in the paragraph.

14. In answer to the allegations in paragraph 14 of the Claim, the Respondents:

- 14.1A refer to and repeat paragraphs 13 to 13B above;

- 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 account;

- 14.2 say that on or around 6 December 2018, Mr Lang prepared a Statement of Advice for the First Applicant, on which the Respondents rely for its full terms, recommending, amongst other things, that:

- 14.2.1 the First Applicant transfer his superannuation from AMP Flexible Super to another product and cancel the Flexible Protection insurance cover held through this account;
- 14.2.2 acquire “MLC” insurance coverage to be held within the superannuation environment through a “risk only super fund” (**MLC Insurance Cover**);

Particulars

- A. Statement of advice dated 6 December 2018 (AMF.1005.0005.0873).
- B. The insurance coverage recommended was “Life and TPD cover” and “Income protection cover”.

- 14.2A say that the MLC Insurance Cover commenced on 18 December 2018 as stated in a Certificate of Currency dated 9 September 2020, on which the Respondents rely for its full term;

Particulars

MLC Life Insurance Certificate of Currency dated 9 September 2020 (AMF.1003.0007.0063).

- 14.2B say that on or around 21 December 2018:

- 14.2B.1 Mr Lang prepared a Record of Advice in relation to advice provided to the First Applicant on or around the same date, on which the Respondents rely for its full terms, recommending that the First Applicant accept the revised terms relating the MLC Insurance Cover;

Particulars

The Record of Advice related to an exclusion being imposed by MLC Insurance with respect to the recommended levels of “TPD” and “Income Protection” and is contained in AMF.1005.0005.1382.

- 14.2B.2 the First Applicant agreed to certain conditions being applied to his application for MLC Insurance Cover and requested the policy be issued on that basis;

Particulars

The agreement is recorded in an “Amendment to Application” signed by the First Applicant at AMF.1005.0005.0258.

- 14.3 say that on or around 3 January 2019, the First Applicant’s AMP Flexible Super account was closed and his Flexible Protection insurance cover 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 the Flexible Protection insurance cover within the First Applicant’s AMP Flexible Super product during the Relevant Period up to around 25 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 the Flexible Protection insurance cover which were paid from the ART, a superannuation fund of which AMP Flexible Super was a part;
- 16.2 otherwise deny the allegations in the paragraph.
- 16A. In answer to the allegations in paragraph 16A of the Claim, the Respondents:
- 16A.1 say that in the absence of proper particularisation of what is meant by “substantially higher” the pleading in paragraph 16A of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
 - B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.
- 16A.2 otherwise deny the allegations in the paragraph.
- 16B. In answer to the allegations in paragraph 16B of the Claim, the Respondents:
- 16B.1 say that in the absence of proper particularisation of what is meant by “substantially cheaper” the pleading in paragraph 16B of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
 - B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.
- 16B.2 otherwise deny the allegations in the paragraph.
- 16C. In answer to the allegations in paragraph 16C of the Claim, the Respondents:
- 16C.1 refer to and repeat paragraphs 10 and 13 to 13B above; and
 - 16C.2 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. In answer to the allegations in paragraph 18 of the Claim, the Respondents:
- 18.1 refer to and repeat paragraphs 37 and 39 below;
 - 18.2 admit the allegations in paragraph 18 of the Claim and say further that, as a Commissioned Product, the commissions payable on the Flexible Lifetime –

Protection Plan product held by the Second Applicant became grandfathered on and from 1 July 2013.

19. In answer to the allegations in paragraph 19 of the Claim, the Respondents:
- 19.1 say that in around July or August 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 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**) on which the Respondents rely for its full terms;
 - 19.3 Mr Spears sent the 2014 Winterton SOA to the Second Applicant via post on or around 2 August 2014;
 - 19.4 the Second Applicant signed the 2014 Winterton SOA on 21 August 2014;
 - 19.5 otherwise deny the allegations in the paragraph.
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";
 - 20.1A say that on 2 September 2014, in respect of the Second Applicant's Flexible Lifetime – Protection Plan product, the death benefit cover was cancelled;
 - 20.2 say that on or around 3 September 2014, "Super Protection" insurance cover was added to the Second Applicant's AMP Flexible Super account;
 - 20.3 say that Super Protection insurance cover was not a separate product acquired by the Second Applicant from the product issuer but rather the insurance cover was provided under an insurance policy issued by AMP Life to ASL;
 - 20.3A say that Super Protection was added on 3 September 2014 to the Second Applicant's AMP Flexible Super account;
 - 20.3B say that the Second Applicant's AMP Flexible Super account was closed around 7 November 2019;

- 20.3C refer to and repeat paragraph 19 above;
 - 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 paragraphs 20 above and 37 and 39 below; and
 - 21.2 say that, as a Commissioned Product, the commissions payable on the Super Protection insurance cover within 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 and paragraph 72 below;
 - 22.2 in relation to paragraph 22.1 of the Claim, say that 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:
 - 22.2.1 Commissions (as described in paragraph 41 below) were paid;
 - 22.2.2 fees and/or charges were deducted from the Second Applicant’s account as set out in annual statements;
 - 22.3 in relation to paragraph 22.2 of the Claim, say that Commissions (as described in paragraph 41 below) were paid in respect of the Super Protection insurance cover within the AMP Flexible Super product held by the Second Applicant during the Relevant Period up to around April 2018;
 - 22.4 otherwise deny the allegations in the paragraph.
- 22A. In answer to the allegations in paragraph 22A of the Claim, the Respondents:
- 22A.1 say that in respect of the Second Applicant’s Flexible Lifetime – Protection Plan, premiums were paid in the period 15 September 2012 to 2 September 2014;
 - 22A.2 say that in respect of the Super Protection insurance cover as part of the AMP Flexible Super product held by the Second Applicant, premiums were paid in the period 27 August 2014 to 1 April 2018;

22A.3 otherwise deny the allegations in the paragraph.

22B. In answer to the allegations in paragraph 22B of the Claim, the Respondents:

22B.1 say that in the absence of proper particularisation of what is meant by “substantially higher”, the pleading in paragraph 22B of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

22B.2 otherwise deny the allegations in the paragraph.

22C. In answer to the allegations in paragraph 22C of the Claim, the Respondents:

22C.1 say that in the absence of proper particularisation of what is meant by “substantially cheaper”, the pleading in paragraph 22C is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

22C.2 otherwise deny the allegations in the paragraph.

22D. In answer to the allegations in paragraph 22D of the Claim, the Respondents:

22D.1 refer to and repeat paragraph 19 above; and

22D.2 deny the allegations in the paragraph.

C.3 The Third Applicant

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

24. In answer to the allegations in paragraph 24 of the Claim, the Respondents:

24.1 refer to and repeat paragraphs 31, 37 and 39 below;

24.2 otherwise admit the allegations in the paragraph.

25. In answer to the allegations in paragraph 25 of the Claim the Respondents:

25.1 say that the Third Applicant received personal advice from Russell Snibson in July 2019 to continue to hold the AMP Flexible Lifetime – Super account **(2019 Lodge Advice)**;

Particulars

Email dated 16 July 2019 from Mr Snibson to the Third Applicant (AMF.3200.0008.1084).

25.2 say that the Third Applicant received personal advice from Wassim Ghattas on or around 18 December 2020 to:

25.2.1 transfer the balance of the Third Applicant’s AMP Flexible Lifetime – Super account to another fund, “AMP MyNorth Super”;

25.2.2 replace the life insurance cover within AMP Flexible Lifetime – Super held through the Third Applicant’s AMP Flexible Lifetime – Super account **(Existing Cover)**, by acquiring life insurance cover through “Zurich Insurance” to be held personally outside superannuation **(Replacement Cover)**;

25.2.3 once the Replacement Cover was in place, cancel the Existing Cover;

25.3 say further that the advice referred to in paragraph 25.2 above provided by Mr Ghattas was recorded in a Statement of Advice dated 18 December 2020 which the Respondents rely on for its full terms;

Particulars

The Statement of Advice dated 18 December 2020 is recorded in AMF.3200.0008.1387.

25.4 say further that around 15 January 2021, the Third Applicant applied for “Zurich Wealth Protection (ZYRTN03), Protection Plus – Non-super” (policy number 91102525) (**Zurich Policy**);

25.5 say further that around 12 February 2021, Zurich Australia Limited declined the Third Applicant’s application for the Zurich Policy due to medical reasons;

Particulars

Letter dated 12 February 2021 to Mr Ghattas from “Life & Investments, Zurich Australia Limited” (AMF.3200.0008.1728).

25.6 say further that:

25.6.1 around 26 February 2021, the Third Applicant received further personal advice from Mr Ghattas to acquire a standalone AMP Elevate policy;

Particulars

The advice was on the basis that Zurich Australia Limited declined life insurance as a result of the Third Applicant’s recent medical underwriting process, a number of different insurers indicated that they would either add a loading or exclusion to the Third Applicant’s cover, and AMP Elevate confirmed that the Third Applicant could convert the Existing Cover to a standalone AMP Elevate policy and the AMP Elevate policy would commence without having to go through medical underwriting.

25.6.2 the advice referred to in paragraph 25.6.1 above provided by Mr Ghattas was recorded in a Record of Advice dated 26 February 2021 and the Respondents rely on it for its full terms;

Particulars

The record of advice was recorded in AMF.3200.0008.1639.

25.7 say further that around 19 March 2021:

25.7.1 the Third Applicant acquired an AMP Elevate life insurance policy (policy number P811897744);

- 25.7.2 the Third Applicant's Existing Cover was cancelled;
- 25.8 say further that:
- 25.8.1 around 22 March 2021, the Third Applicant acquired an AMP MyNorth Super account;
- 25.8.2 around 13 April 2021, the Third Applicant's AMP Flexible Lifetime – Super account was closed;
- 25.9 otherwise deny the allegations in the paragraph.
26. In answer to the allegations in paragraph 26 of the Claim, the Respondents:
- 26.1 refer to and repeat paragraph 25 above;
- 26.2 say that from 14 July 2005 to the end of the Relevant Period, the Third Applicant held an AMP Flexible Lifetime – Super account;
- 26.3 say that on 15 May 2020, the benefits of the Third Applicant in the AMP Flexible Lifetime – Super account were transferred by way of successor fund transfer from the ASST to the Super Directions Fund;
- 26.4 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 10 July 2015, the Third Applicant received personal advice from Mr Snibson to acquire an AMP income protection insurance policy to be held by the Third Applicant;
- 27.2 the advice referred to in paragraph 27.1 was recorded in a Statement of Advice dated 10 July 2015 (**2015 Lodge SOA**) and the Respondents rely on that document for its full terms;

Particulars

- The 2015 Lodge SOA was contained in a Statement of Advice prepared by Mr Snibson on 10 July 2015 (AMF.3200.0008.0575).
- 27.3 on or around 8 October 2015, the Third Applicant's application for income protection insurance (P130063931) was declined due to the overall medical history disclosed on the Third Applicant's application;

27.4 on or around 9 February 2016, the Third Applicant received personal advice from Mr Snibson to accept an offer of income protection insurance on revised terms (**2016 Lodge Advice**); and

Particulars

The 2016 Lodge Advice was contained in an email sent by Mr Snibson to the Third Applicant on 9 February 2016 (AMF.3200.0008.0831).

27.5 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 7 April 2016, the Third Applicant acquired an “AMP Elevate” Income Insurance Plan (policy number P130117245) (**AMP Elevate Insurance Policy**);

Particulars

The details of the AMP Elevate Insurance Policy were contained in a letter dated 7 April 2016 addressed to the Third Applicant (AMF.3200.0008.2257).

28.3 say that on or around 9 June 2018, the AMP Elevate Insurance Policy was cancelled due to the Third Applicant failing to pay the premium from 6 April 2018;

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

29. In answer to the allegations in paragraph 29 of the Claim, the Respondents:

29.1 refer to and repeat paragraphs 31, 37, 43 and 44A of the Defence below;

29.2 otherwise admit the allegations in the paragraph.

30. [not used]

31. In answer to the allegations in paragraph 31 of the Claim, the Respondents:

31.1 refer to and repeat paragraphs 28 above and paragraphs 41 to 43 below;

31.2 say that Commissions (as described in paragraph 41 below) were paid with respect to:

- 31.2.1 the Third Applicant's AMP Flexible Lifetime – Super product up to around May 2020;
 - 31.2.2 the AMP Elevate Insurance Policy between April 2016 and April 2018;
 - 31.3 otherwise deny the allegations in the paragraph.
- 31A. In answer to the allegations in paragraph 31A of the Claim, the Respondents:
- 31A.1 admit in respect of the Third Applicant's AMP Flexible Lifetime – Super product, that:
 - 31A.1.1 from the commencement of the Relevant Period until 15 May 2020, premiums were paid from ASST;
 - 31A.1.2 for the balance of the Relevant Period, premiums were paid from the Super Directions Fund;
 - 31A.2 admit that in respect of the Third Applicant's AMP Elevate Insurance Policy, premiums were paid by the Third Applicant in or around April 2016 and April 2017;
 - 31A.3 refer to and repeat paragraph 28.3 above;
 - 31A.4 otherwise deny the allegations in the paragraph.
- 31B. In answer to the allegations in paragraph 31B of the Claim, the Respondents:
- 31B.1 say that in the absence of proper particularisation of what is meant by "substantially higher" the pleading in paragraph 31B of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
 - B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.
- 31B.2 otherwise deny the allegations in the paragraph.
- 31C. In answer to the allegations in paragraph 31C of the Claim, the Respondents:

- 31C.1 say that in the absence of proper particularisation of what is meant by “substantially cheaper”, the pleading in paragraph 31C is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

- 31C.2 otherwise deny the allegations in the paragraph.

- 31D. In answer to the allegations in paragraph 31D of the Claim, the Respondents:

- 31D.1 refer to and repeat paragraphs 25 and 27 above;

- 31D.2 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 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 and the Respondents rely on it for its full terms;

- 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 ss 961B(1) and 961J of the Corporations Act;

- 32.3.2 the prohibition on conflicted remuneration under ss 963E-963L of the Corporations Act;

- 32.3.3 the definition of “personal advice” in s 766B of the Corporations Act; and
 - 32.3.4 the licensing regime in Chapter 7 of the Corporations Act which introduced the term “authorised representative” (e.g. s 761A (definition of “authorised representative”));
 - 32.4 otherwise deny 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;
 - 33.1A refer to and repeat paragraph 32 above;
 - 33.2 otherwise do not know and do not admit the allegations in the paragraph.
34. In answer to the allegations in paragraph 34 of the Claim, the Respondents:
- 34.1 say that the definition of financial product in s 763A(1) of the Corporations Act was introduced by the FSR Act;
 - 34.2 otherwise admit the allegations in paragraph 34 of the Claim; and
 - 34.3 say further that as a Commissioned Product, the commissions payable on 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. In answer to the allegations in paragraph 36 of the Claim the Respondents:
- 36.1 refer to and repeat paragraphs 41 to 43 and paragraph 72 below;
 - 36.2 say that with respect to the PortfolioCare Investment Service product during the Relevant Period up to around 16 October 2018:
 - 36.2.1 Commissions (as described in paragraph 41 below) were paid; and
 - 36.2.2 fees and/or charges were deducted from the Fourth Applicant’s account;

Particulars

- A. PortfolioCare Quarterly Investment Report 1 April 2014 to 30 June 2014 (AMF.3100.0003.3748).
- B. PortfolioCare Quarterly Investment Report 1 July 2014 to 30 September 2014 (AMF.3100.0003.3758).
- C. PortfolioCare Quarterly Investment Report 1 October 2014 to 31 December 2014 (AMF.3100.0003.3742).
- D. PortfolioCare Quarterly Investment Report 1 January 2015 to 31 March 2015 (AMF.3100.0003.3776).
- E. PortfolioCare Quarterly Investment Report 1 April 2015 to 30 June 2015 (AMF.3100.0003.3770).
- F. PortfolioCare Quarterly Investment Report 1 July 2015 to 30 September 2015 (AMF.3100.0003.3782).
- G. PortfolioCare Quarterly Investment Report 1 October 2015 to 31 December 2015 (AMF.3100.0003.3764).
- H. PortfolioCare Quarterly Investment Report 1 January 2016 to 31 March 2016 (AMF.3100.0003.3800).
- I. PortfolioCare Quarterly Investment Report 1 April 2016 to 30 June 2016 (AMF.3100.0003.3794).
- J. PortfolioCare Quarterly Investment Report 1 July 2016 to 30 September 2016 (AMF.3100.0003.3804).
- K. PortfolioCare Quarterly Investment Report 1 October 2016 to 31 December 2016 (AMF.3100.0003.3788).
- L. PortfolioCare Quarterly Investment Report 1 January 2017 to 31 March 2017 (AMF.3100.0003.3822).
- M. PortfolioCare Quarterly Investment Report 1 April 2017 to 30 June 2017 (AMF.3100.0003.3816).
- N. PortfolioCare Quarterly Investment Report 1 July 2017 to 30 September 2017 (AMF.3100.0003.3828).

- O. PortfolioCare Quarterly Investment Report 1 October 2017 to 31 December 2017 (AMF.3100.0003.3810).
- P. PortfolioCare Quarterly Investment Report 1 January 2018 to 31 March 2018 (AMF.3100.0003.3842).
- Q. PortfolioCare Quarterly Investment Report 1 April 2018 to 30 June 2018 (AMF.3100.0003.3836).
- R. PortfolioCare Quarterly Investment Report 1 July 2018 to 30 September 2018 (AMF.3100.0003.3854).
- S. PortfolioCare Final Benefit Statement 16 October 2018 (AMF.3100.0003.3848).

36.3 otherwise deny the allegations in the paragraph.

36A. In answer to the allegations in paragraph 36A of the Claim, the Respondents:

36A.1 refer to and repeat paragraphs 1.2A and 1.3 above;

36A.2 say that Maurice Horlick completed an online application form on 28 March 2005 on behalf of the Fourth Applicant;

Particulars

Online application form dated 28 March 2005 (AMF.3100.0003.3273).

36A.3 say that a welcome letter dated 30 March 2005 confirmed the Fourth Applicant's AMP Flexible Lifetime – Super application was processed on 28 March 2005;

36A.4 say the phrase “an AMPFP personal representative” is embarrassing and liable to be struck out;

36A.5 otherwise deny the allegations in the paragraph.

36B. In answer to the allegations in paragraph 36B of the Claim, the Respondents:

36B.1 refer to and repeat paragraphs 1.2A, 1.3 and 36A above;

36B.2 say that on 28 March 2005, the Fourth Applicant acquired the AMP Flexible Lifetime – Super product;

- 36B.3 otherwise do not know and do not admit the allegations in the paragraph.
- 36C. The Respondents admit the allegations in paragraph 36C of the Claim.
- 36D. In answer to the allegations in paragraph 36D of the Claim, the Respondents:
- 36D.1 refer to and repeat paragraphs 1.2A and 1.3 above;
- 36D.2 say that from 28 March 2005 until the end of the Relevant Period, the Fourth Applicant held an AMP Flexible Lifetime – Super account;
- 36D.3 say that on 15 May 2020, the benefits of the Fourth Applicant in the AMP Flexible Lifetime – Super account were transferred by way of successor fund transfer from the ASST to the Super Directions Fund;
- 36D.4 deny that the Fourth Applicant “renewed” the AMP Flexible Lifetime – Super product during the Relevant Period;
- 36D.5 otherwise admit the allegations in the paragraph.
- 36E. In answer to the allegations in paragraph 36E of the Claim the Respondents:
- 36E.1 refer to and repeat paragraphs 41 to 43 and paragraph 72 below;
- 36E.2 say that with respect to the AMP Flexible Lifetime – Super product held by the Fourth Applicant during the Relevant Period:
- 36E.2.1 Commissions (as described in paragraph 41 below) were paid;
and
- 36E.2.2 fees and/or charges were deducted from the Fourth Applicant’s account as set out in annual statements;
- 36E.3 otherwise deny the allegations in the paragraph.
- 36F. The Respondents deny the allegations in paragraph 36F of the Claim:
- 36F.1 refer to and repeat paragraphs 1.2A and 1.3 above;
- 36F.2 say that “personal advice” could not be given in March 1985 as the definition of that term was introduced into the Corporations Act by the FSR Act; and
- 36F.3 refer to and repeat paragraph 5.1A above and say that Mr Horlick was not acting on behalf of any of the AMP Licensees.

36G. In answer to the allegations in paragraph 36G of the Claim, the Respondents:

36G.1 refers to and repeat paragraph 36F above;

36G.2 otherwise do not know and do not admit the paragraph.

36H. In answer to the allegations in paragraph 36H of the Claim, the Respondents:

36H.1 say that the definition of “financial product” in s 763A(1) of the Corporations Act was introduced by the FSR Act; and

36H.2 otherwise admit the allegations in paragraph 36H of the Claim.

36I. In answer to the allegations in paragraph 36I of the Claim, the Respondents:

36I.1 refer to and repeat paragraphs 1.2A and 1.3 above;

36I.2 say that from 13 March 1985 until the end of the Relevant Period, the Fourth Applicant held the Endowment Personal Super Plan with plan number H8661491-Y;

36I.3 say that on or around 29 June 2011, the benefits of the Fourth Applicant’s Endowment Personal Super Plan were transferred by way of successor fund transfer from the AMP Personal Superannuation Fund to the ASST;

36I.4 say that on 15 May 2020, the benefits of the Fourth Applicant in the Endowment Personal Super Plan were transferred by way of successor fund transfer from the ASST to the National Mutual Retirement Fund;

36I.5 deny that the Fourth Applicant “renewed” the Endowment Personal Super Plan product during the Relevant Period;

36I.6 otherwise admit the allegations in the paragraph.

36J. In answer to the allegations in paragraph 36J of the Claim the Respondents:

36J.1 refer to and repeat paragraphs 41 to 43 and paragraph 72 below;

36J.2 say that with respect to the Endowment Personal Super Plan product held by the Fourth Applicant during the Relevant Period:

36J.2.1 Commissions (as described in paragraph 41 below) were paid;

36J.2.2 premiums were payable, which covered the fees for administering the plan; and

36J.2.3 fees, expenses and charges were deducted from the investments backing the Endowment Personal Super Plan.

36J.3 otherwise deny the allegations in the paragraph.

D THE RELEVANT PRODUCTS

D.1 Commissioned Products

37. In answer to the allegations in paragraph 37, the Respondents:

37.1 say that the definition of financial product in s 763A(1) of the Corporations Act was introduced by the FSR Act;

37.2 otherwise 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 Plan 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 AMP Flexible Lifetime – Super and AMP Flexible Super 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;

- 39.2.3 “Super Protection” and “Flexible Protection” were names of insurance cover options offered to members who held the AMP Flexible Super product;
- 39.2A refer to and repeat paragraphs 43, 44 and 44A below;
- 39.2B say that, for the avoidance of doubt, the Respondents do not agree with the Applicants’ use of the defined term “AMP Life Products” throughout the Claim for the reasons referred to in this paragraph;
- 39.3 otherwise admit the allegations in the paragraph.
- 39A. In answer to the allegations in paragraph 39A of the Claim, the Respondents:
- 39A.1 refer to and repeat paragraph 39 above;
- 39A.2 say that whether each insurance product could be held by the insured personally and/or through a trustee of a superannuation fund of which the insured was or is a member depended on the particular product;
- 39A.3 otherwise admit the allegations in the paragraph.
40. In answer to the allegations in paragraph 40 of the Claim, the Respondents:
- 40.1A refer to and repeat paragraph 39 above;
- 40.1 say that only Flexible Lifetime – Protection Plan products 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.
- 40A. In answer to the allegations in paragraph 40A of the Claim, the Respondents:
- 40A.1 refer to and repeat paragraph 39 above;
- 40A.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 **(Distribution Agreements)**.

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 dated 1 March 2004 between Charter and AMP Life (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 undated (AMF.1002.0001.0254).
 - K. AMP Platforms Remuneration Schedule to the AFSL Licensee Agreement (AMF.1002.0001.0064).
 - L. AMP Facilitation Schedule dated November 2017 (AMF.3009.0001.0002).
 - M. Further particulars may be provided with discovery and evidence.
- 42A. The Respondents admit the allegations in paragraph 42A of the Claim and say further that:
- 42A.1 the AMP Authorised Representatives were not parties to the Distribution Agreements; and
 - 42A.2 the Distribution Agreements did not provide for Authorised Representatives to receive trailing Commissions.
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, and paragraph 44A below;
 - 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, and paragraph 44A below;
 - 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.
- 44A. The Respondents deny the allegations in paragraph 44A of the Claim, and:
- 44A.1 refer to and repeat paragraphs 39, 43 and 44 above;
 - 44A.2 refer to the further particulars provided by the Applicants in Piper Alderman's letter of 25 January 2024;
 - 44A.3 say that whether or not Commissions could be switched off, dialled down or rebated (including the rate of commission, if any, agreed to between the AMP Authorised Representative and client) depended on the particular product.
- 44B. In answer to the allegations in paragraph 44B of the Claim, the Respondents:
- 44B.1 refer to and repeat paragraph 39 above;
 - 44B.2 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;
 - 44B.3 otherwise deny the allegations in the paragraph.
- 44C. The Respondents deny the allegations in paragraph 44C of the Claim and:

- 44C.1 refer to and repeat paragraph 44B above; and
- 44C.2 say further that if and to the extent that an AMP Authorised Representative and their client were to agree to an alternative remuneration structure, the cost to the client would depend on the individual circumstances including the terms of that agreement.
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 AFSL 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 during the Relevant Period the client register rights of the AMP Authorised Representatives who dealt with or advised the Applicants were not acquired by the relevant AMP Licensee in accordance with buy-back rights at the time those AMP Authorised Representatives were dealing with or advising the Applicants;

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 41 to 46 of the Claim or admitted in paragraphs 41 to 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 any remuneration 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 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:

47.4.1 the needs, objectives and circumstances of the person at a particular point in time including their age, sex, occupation, if any, smoking status, medical history and pastimes;

47.4.2 what other financial products they held;

47.4.3 what was disclosed to any person providing financial advice to the person;

47.5 say that in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraph 47.3 of the Claim is embarrassing and liable to be struck out.

Particulars

A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.

B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

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;

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

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

47B.1 refer to and repeat paragraph 47A above, and paragraphs 50A to 50C below;

47B.2 refer to the further particulars provided by the Applicants in Piper Alderman’s letter of 25 January 2024;

47B.3 otherwise deny the allegations in the paragraph.

E.2 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, and paragraph 50 below;

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.

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

50A.1 as to paragraph 50A.1(a):

50A.1.1 admit that between the start of the Relevant Period and the end of 2016, Practices who joined Hillross prior to 1 July 2013 (**Grandfathered Hillross Practices**) may have been eligible to

qualify for a short-term reward scheme (**Hillross STR Program**);

50A.1.2 say that the Hillross STR Program was not available to new Practices becoming an Authorised Representative of Hillross from 1 July 2013 (**New Hillross Practices**);

50A.2 as to paragraph 50A.1(b), say that:

50A.2.1 Grandfathered Hillross Practices were generally eligible for the Hillross STR Program if they generated a minimum annual advisory firm contribution on behalf of Hillross of \$150,000;

50A.2.2 advisory firm contribution was calculated as the sum of contractual third-party fees paid to Hillross referable to the Grandfathered Hillross Practice through administration fees from various platform providers, fund manager fees and certain product manager fees;

50A.2.3 if eligible, the Grandfathered Hillross Practice was entitled to a share of the firm contribution that Hillross received based on a sliding scale;

Particulars

Hillross Terms and Conditions Manual – Remuneration and Benefits effective October 2013 (AMF.1003.0002.0052 from .0065).

50A.3 as to paragraph 50A.2(a), say that:

50A.3.1 the Development Management and Advice program (**DMA Program**) for Hillross was a recognition model comprising of a balanced scorecard which included compliance and education criteria to be met in order for a Practice to be eligible to receive recognition;

Particulars

A. The Hillross 2015 Recognition Model – Information Guide (AMP.4000.0501.1309).

- B. Development management and advice (DMA), including Advice Growth Index (July 2017) (AMF.1003.0002.0939).

50A.3.2 the DMA Program for Hillross applied from 2015;

Particulars

The Hillross 2015 Recognition Model – Information Guide (AMP.4000.0501.1309 at .0003).

50A.3.3 transitional arrangements in relation to the DMA Program for Hillross applied from March 2020 until the end of the Relevant Period;

Particulars

Amendment to the Hillross Terms and Conditions Manual – Remuneration and Benefits Booklet 2013 (effective March 2020) (AMF.1003.0002.0968).

50A.4 as to 50A.2(b), say that from 2015 to March 2020:

50A.4.1 the DMA Program involved ranking Practices within their peer group based on their results in a balanced scorecard in order to determine the level of recognition, which was a percentage referable to a Practice's ranking;

Particulars

The Hillross 2015 Recognition Model – Information Guide (AMP.4000.0501.1309 at .0005, .0010 and .0011).

50A.4.2 the balanced scorecard used to rank Practices included the following criteria:

- a. Audit 30%: All Authorised Representatives at a Practice needed to receive an A, B, or C audit rating;
- b. Continuing Professional Development (**CPD**) 30%: All Authorised Representatives at a Practice had to meet their CPD quota for the year;

- c. Advice Growth Index (**AGI**) 30%: AGI points were based on gross inflows and outflows achieved during the calendar year based on product classes such as fees for service and funds under management, and a Practice's AGI score was a representation of its AGI points rank within its peer group;
- d. Business Plan 10%: A business plan for the Practice was in place and recognised by the Licensee;
- e. an additional 10% benefit was provided to Practices with additional qualifications and who were members of professional associations;

Particulars

The Hillross 2015 Recognition Model – Information Guide
(AMP.4000.0501.1309 at .0006, .0008 and .0013).

- 50A.4.3 say that a Practice was only eligible for recognition under the DMA Program if it received a score greater than 70% in the balanced scorecard;

Particulars

The Hillross 2015 Recognition Model – Information Guide
(AMP.4000.0501.1309 at .0012).

- 50A.4.4 say that if one Authorised Representative in a Practice did not meet the audit and CPD requirements, the Practice would receive 0% for those parts of the scorecard and would not be eligible to receive recognition under the DMA Program;

Particulars

The Hillross 2015 Recognition Model – Information Guide
(AMP.4000.0501.1309 at .0015 and .0016).

- 50A.4.5 say that a Practice that was eligible for payment pursuant to the DMA Program would receive a payment equal to the multiple of its level of recognition percentage and the Practice's eligible revenue;

50A.5 say that from March 2020 until the end of the Relevant Period, the Hillross DMA program was subject to transitional arrangements that involved a DMA payment that was:

50A.5.1 based on a Practice's 2018 revenue that was directly attributable to the provision of financial advice and not as a result of upfront or ongoing commission payments;

50A.5.2 reduced annually;

Particulars

Amendment to the Hillross Terms and Conditions Manual (HTC), 2013 Remuneration and Benefits Booklet (AMF.1003.0002.0968).

50A.6 as to paragraph 50A.3, refer to and repeat paragraphs 52 and 53 below; and

50A.7 otherwise deny the allegations in the paragraph.

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

50B.1 say that VPS:

50B.1.1 was in force between the start of the Relevant Period until 8 August 2019;

50B.1.2 was available to Practices who were Authorised Representatives of Charter prior to 1 July 2013 (**Grandfathered Charter Practices**) in respect of policies in force as at 1 July 2014;

50B.1.3 was not available to new Practices that became Authorised Representatives of Charter from 1 July 2013 (**New Charter Practices**);

50B.1.4 involved a twice-yearly payment to eligible businesses based on the average contracted annual in force premium in the prior 12 months and the total funds under management within selected AMP products;

Particulars

Value Participation Scheme (**VPS**) and Transition Support Payment (**TSP**) Standard Practices dated 26 June 2020 (AMF.3018.0001.0008).

50B.2 say that from 2015 until 31 January 2020:

50B.2.1 Charter had in place a DMA Program in substantially the same form as that referred to in paragraphs 50A.3 and 50A.4 above;

Particulars

Charter 2015 Recognition Model – Information Guide (AMP.4000.0501.1312).

50B.2.2 refer to and repeat paragraphs 50A.3 and 50A.4 above;

50B.3 say that from 31 January 2020 until the end of the Relevant Period, the Charter DMA program was subject to transitional arrangements that involved a DMA payment that was:

50B.3.1 based on a Practice's 2018 revenue that was directly attributable to the provision of financial advice and not as a result of upfront or ongoing commission payments;

50B.3.2 reduced annually;

50B.4 as to paragraph 50B.3, refer to and repeat paragraphs 52 and 53 below; and

50B.5 otherwise deny the allegations in the paragraph.

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

50C.1 as to paragraph 50C.1:

50C.1.1 admit that between the start of the Relevant Period until 1 January 2020, AMPFP Grandfathered Practices and New Practices were generally eligible to qualify for the Business Growth Allowance, renamed as Business Growth and Advice support at the start of the Relevant Period (**BGA**);

50C.1.2 say that BGA payments were based on 1% of a Practice's eligible revenue;

Particulars

- A. Settlement & Recognition terms dated 1 January 2014 (AMF.1003.0002.0728).
- B. Settlement & Recognition terms dated 1 January 2015 (AMF.1003.0002.0786).
- C. Settlement & Recognition terms dated 1 January 2016 (AMF.1003.0002.0845).
- D. Settlement & Recognition terms dated 8 August 2019 (AMF.1003.0002.0934).

50C.2 say that from the start of the Relevant Period until 13 December 2019:

50C.2.1 subject to paragraph 50C.4 below, AMPFP had in place a DMA Program in substantially the same form as that referred to in paragraphs 50A.3 and 50A.4 above;

Particulars

2014 Settlement and recognition terms dated 1 January 2014 (AMP.6000.0007.1518).

50C.2.2 refer to and repeat paragraphs 50A.3 and 50A.4 above;

50C.3 say that from 13 December 2019 until the end of the Relevant Period, the AMPFP DMA program was subject to transitional arrangements that involved a DMA payment that was:

50C.3.1 based on a Practice's 2018 revenue that was directly attributable to the provision of financial advice and not as a result of upfront or ongoing commission payments;

50C.3.2 reduced annually;

Particulars

2016 Settlement and Recognition Terms Amendment (AMP.6600.0001.1400).

50C.4 say that Bonus DMA, in the context of the DMA Program for AMPFP, was:

- 50C.4.1 a bonus DMA payment percentage ranging from 0% to 5% based on a practice's revenue band;
 - 50C.4.2 available to eligible practices with high-scoring scorecards;
 - 50C.5 as to paragraph 50C.4, refer to and repeat paragraphs 52 and 53 below; and
 - 50C.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 50C above;
 - 51.2 say that whether or not the matters alleged in paragraphs 48 to 50C 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 the allegations in paragraph 51A of the Claim, the Respondents:
- 51A.1 refer to and repeat paragraphs 48 to 50C 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 (AMF.1003.0003.0039) and amendments to that policy, thereafter superseded by revised BOLR policies dated 1 June 2017 (AMF.1003.0003.0001), 8 August 2019 (AMF.1001.0001.0090) and 8 September 2020 (AMP.5800.0219.0014).
- 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 policies of Charter dated July 2013 (AMF.3005.0001.0001) and December 2013 (AMP.5800.0103.3376), and as amended in August 2019 (AMP.5800.0103.3375).
- 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 (AMF.1003.0002.0980) and the Hillross Register and Buy Back changes dated 8 August 2019 (AMP.5800.0106.8867).
- 52.9 say that the BOLR Policy provided that an AMP Authorised Representative was only entitled to ongoing service fees in that they were only included in calculating the value of client register rights where the agreed services were in fact provided;

Particulars

- A. In respect of AMPFP, Register and BOLR Policy of AMPFP dated 1 July 2012 (AMF.1003.0003.0039) page 6; BOLR Policy dated 1 June 2017 (AMF.1003.0003.0001), page 4; BOLR Policy dated 8 August 2019

(AMF.1001.0001.0090) page 4; BOLR Policy effective 8 September 2020 (AMP.5800.0219.0014) page 4.

- B. In respect of Charter, Standard Practices – Buy Out Option Policy of Charter dated July 2013 (AMF.3005.0001.0001) page 3; Standard Practices – Buy Out Option Policy of Charter dated December 2013 (AMP.5800.0103.3376) page 3; Buy out option changes – Standard buy out option (Standard BOO) and Enhanced buy out option (EBOO) dated 8 August 2019 (AMP.5800.0103.3375) page 2.
- C. In respect of Hillross, Terms and Conditions Manual for Register and Buy-Back of Hillross dated June 2013 (AMF.1003.0002.0980) page 10 and the Hillross Register and Buy Back changes dated 8 August 2019 (AMP.5800.0106.8867).

52.10 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 paragraphs 46 and 52 above;

53.2 otherwise deny the allegations in the paragraph.

53A. The Respondents deny the allegations in paragraph 53A of the Claim and rely on the memorandum particularised by the Applicants for its full terms.

53B. In answer to the allegations in paragraph 53B of the Claim, the Respondents:

53B.1 refer to and repeat paragraphs 52 and 53 above;

53B.2 otherwise deny the allegations in the paragraph.

53C. In answer to the allegations in paragraph 53C of the Claim, the Respondents say that:

53C.1 AMP Authorised Representatives who purchased client register rights during the Relevant Period could finance the transaction by a loan from AMP Bank Limited, or in the case of certain Authorised Representatives of Hillross and Charter, AMP Bank Limited or other lenders;

53C.2 if AMP Bank Limited provided a loan, it may have taken security in respect of the loan and/or may have required a personal guarantee to be provided;

- 53C.3 the financing arrangements referred to in paragraph 53C.1 and 53C.2 above depended on the circumstances of the AMP Authorised Representative and what agreement they reached with AMP Bank Limited; and
- 53C.4 otherwise deny the allegations in the paragraph.
- 53D. In answer to the allegations in paragraph 53D of the Claim, the Respondents:
- 53D.1 say that whether or not the switching off, dialling down or rebating of Commissions would have adversely affected the value of client register rights or Buy-Back Options depended on an evaluation of the particular client register and what, if any, fees or charges were being charged;
- 53D.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 to 53D of the Claim or admitted in paragraphs 52 to 53D 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 the matters set out in paragraphs 46 and 47.2 above;

54.1A refer to the further particulars provided by the Applicants in Piper Alderman's letter of 25 January 2024;

54.2 otherwise deny the allegations in the paragraph.

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

54A.1 refer to and repeat paragraphs 52 to 53D 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 16C above;

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

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

55.4 in respect of the Fourth Applicant, refer to and repeat paragraphs 32 to 36J 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, 36E, 36J, 41 to 46 and 55 above;
 - 57.2 say that Commissions were not always funded by way of 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 the allegations in 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 C above and section H below;

61.2 admit that during the Relevant Period certain AMP Authorised Representatives held themselves out to the Applicants as advisers or financial planner in statements or correspondence;

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 and 25 to 26 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 and 25 to 26 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, 25 to 26 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 paragraphs 16, 31A and 39 above;
 - 66.2 say that AMP Life charged premiums on the First Applicant's Flexible Protection insurance cover within AMP Flexible Protection;
 - 66.2A say that AMP Life charged premiums on the insurance component of the Third Applicant's AMP Flexible Lifetime – Super product;
 - 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 age, sex, occupation, if any, smoking status, medical history and pastimes;
 - 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 including the definition of “Excess Premiums” is embarrassing and liable to be struck out;
- 67.5 say further that they are unable to plead to unparticularised allegations regarding 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 and paragraph 107A.6 below; and
- 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**), Ongoing Service Agreements (**OSAs**), Annual Advice Agreements (**AAA**) 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, OSAs, AAA, 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:
- 72.1A say that in respect of the First Applicant:
- 72.1A.1 the First Applicant paid fees for services provided by Mr Lang and U-First Financial Solutions Pty Ltd during the Relevant Period;
- 72.1A.2 those fees were disclosed to and agreed to by the First Applicant;

Particulars

- A. Statement of Advice dated 13 July 2012 (AMF.1005.0011.0223) at page 40 under "Advice and product costs" it is stated "During our meeting, we agreed the scope of the initial and ongoing services we will provide to you as well as our fees. These are set out below. As agreed, our services will include...". Mr Stack signed an Authority to Proceed with the recommendations in the advice (AMF.1005.0007.0077).
- B. Statement of Advice dated 11 October 2012 (AMF.1005.0010.0049) at page 27 (at .0075) under "Advice and product costs" it is stated "During our meeting, we agreed the scope of the initial and ongoing services we will provide to you as well as our fees. These are set out below. As agreed, our services will include...". Mr Stack signed an Authority to Proceed with the recommendations in the advice (AMF.1005.0010.0047).
- C. Statement dated 18 December 2015 (AMF.1005.0012.0040) page 24 under "Advice and product costs" it is stated "During our meeting, we agreed the scope of the initial and ongoing services we will provide to you as well as our fees. These are set out below. As agreed, our services will include..." Mr Stack

consented to these terms on signing the Authority to Proceed (AMF.1005.0012.0132).

- D. Ongoing Services Agreement signed and dated 25 July 2018 (AMF.1005.0007.0163).
- E. Ongoing Services Agreement signed and dated 6 December 2018 (AMF.1005.0005.1372).
- F. Annual Advice Agreement signed by Mr Stack on 15 September 2020 for the period 10 December 2020 to 09 December 2021 (AMF.1005.0007.0171).

72.1A.3 the services Mr Lang and U-First Financial Solutions Pty Ltd disclosed to and agreed to provide to the First Applicant during the Relevant Period were recorded in documents agreed to by the First Applicant.

Particulars

- A. Statement of Advice dated 13 July 2012 (AMF.1005.0011.0223) at page 40 under "Advice and product costs".
- B. Statement of Advice 11 October 2012 (AMF.1005.0010.0049) at page 27 (at .0075) under "Advice and product costs".
- C. Statement of Advice dated 18 December 2015 (AMF.1005.0012.0040) at page 24 under "Advice and product costs".
- D. Ongoing Services Agreement (OSA) signed by Mr Lang and Mr Stack on 25 July 2018 (AMF.1005.0007.0163).
- E. OSA signed by Mr Lang and Mr Stack on 6 December 2018 (AMF.1005.0005.1372).
- F. Annual Advice Agreement signed by Mr Stack on 15 September 2020 for the period 10 December 2020 to 9 December 2021 (AMF.1005.0007.0171).

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.
- 72.2A say that the Third Applicant paid fees for services from the start of the Relevant Period until on or around June 2020;

Particulars

- A. Fee disclosure statement for the Third Applicant for the statement period 10 July 2016 to 9 July 2017 (AMF.3200.0008.0975).

- B. Fee disclosure statement for the Third Applicant for the statement period 10 July 2017 to 9 July 2018 (AMF.3200.0008.1082).
- C. Fee disclosure statement for the Third Applicant for the statement period 9 July 2018 to 8 July 2019 (AMF.3200.0008.1086).

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 ss 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:
 - 73.5.1A say that the First Applicant agreed to pay, and paid, an ongoing service fee as set out in paragraphs 72.1A.1 to 72.1A.3 above;
 - 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 set out in paragraphs 72.1.2 to 72.1.5 above;
 - 73.5.2A say that the Third Applicant agreed to pay, and paid, an ongoing service fee, as set out in paragraphs 72.2A 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 set out 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 above;
- 75.4 otherwise deny the allegations in the paragraph.
76. In answer to the allegations in paragraph 76 of the Claim, the Respondents:
- 76.1A in respect of the First Applicant, refer to and repeat paragraph 72.1A.1 above;
- 76.1 in respect of the Second Applicant, refer to and repeat paragraph 72.1.5 above;
- 76.2A in respect of the Third Applicant, refer to and repeat paragraph 72.2A 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.

76A. The Respondents deny the allegations in paragraph 76A of the Claim and:

76A.1 refer to and repeat paragraph 41 above;

76A.2 refer to the further particulars provided by the Applicants in Piper Alderman's letter of 25 January 2024; and

76A.3 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members.

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

77.1A say that the First Applicant was provided with services during the Relevant Period;

Particulars

A. The services Mr Lang and U-First Financial Solutions Pty Ltd provided to the First Applicant included:

- i. preparation of the 2012 Stack SOA dated 11 October 2012 (AMF.1005.0010.0049), 2015 Stack SOA dated 18 December 2018 (AMF.1005.0012.0040);
- ii. meeting with Mr Stack on an annual basis to conduct reviews, including of Mr Stack's investments and insurances;
- iii. completion of administration duties.

77.1 say that the Second Applicant was provided with services during the Relevant Period;

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.

77.2A say that the Third Applicant was provided with services during the Relevant Period;

Particulars

A. Mr Snibson and Mr Ghattas provided the Third Applicant with services during the Relevant Period, including:

- i. Preparation and presentation of statements of advice (AMF.3200.0008.0575 and AMF.3200.0008.1387);
- ii. reviewing the Third Applicant's superannuation, investment, insurance and retirement arrangements and discussing these with her or providing information in relation to the products held by the Third Applicant to her (AMF.3200.0008.0973; AMF.3200.0008.1091, AMF.3200.0008.0976, AMF.3200.0008.0977; AMF.3200.0008.0982; AMF.3200.0008.0983; AMF.3200.0008.1090; AMF.3200.0008.1084; AMF.3200.0008.1092);
- iii. completion of administrative duties (AMF.3200.0008.1068; AMF.3200.0008.1078; AMF.3200.0008.0007).

77.2 say that the Fourth Applicant did not pay any ongoing service fees and refer to and repeat 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. [not used]

79. [not used]

80. [not used]

81. [not used]

82. [not used]

83. [not used]

84. [not used]

85. [not used]

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:

87.1A refer to and repeat paragraphs 67.4 and 86 above, and paragraphs 88 to 90 below;

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 Financial Services Guides/Financial Services and Credit Guides 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 Applicants by reason of the matters set out in paragraphs 71 to 77 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.
- 94A. The Respondents deny the allegations in paragraph 94A of the Claim and rely on the terms of the Enterprise Risk Management Reports particularised by the Applicants for their full terms.
- 94B. In answer to the allegations in paragraph 94B of the Claim, the Respondents:
- 94B.1 say that the allegations in relation to the AMP Licensees' expectations in paragraph 94B of the Claim is embarrassing and liable to be struck out;
- 94B.2 say that on around 4 February 2019, the Federal Government announced that it would repeal the 'grandfathering' regime that applied to the conflicted remuneration provisions under the Corporations Act;

Particulars

Explanatory Memorandum to the Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019 (Cth) at page 3.

- 94B.3 otherwise deny the allegations in the paragraph.

- 94C. The Respondents deny the allegations in paragraph 94C of the Claim and rely on the terms of the memorandum particularised by the Applicants for their full terms.
- 94D. In answer to the allegations in paragraph 94D of the Claim, the Respondents:
- 94D.1 refer to and repeat paragraphs 50A to 50C and 94A to 94C above;
- 94D.2 admit that during the Relevant Period the AMP Licensees did not instruct the AMP Authorised Representatives to dial down, switch off or rebate the Commissions to the Applicants and Group Members;
- 94D.3 say that the AMP Licensees were not obliged to instruct the AMP Authorised Representatives to dial down, switch off or rebate the Commissions to the Applicants and Group Members;
- 94D.4 for AMPFP, say that where a Practice submitted a buy back notice that had an exercise date of 1 January 2020 or later, amounts referable to commissions were excluded from the valuation of client register rights when exercising their buy-back rights;

Particulars

AMPFP Buyer of Last Resort terms dated 8 August 2019
(AMF.1003.0001.0143).

- 94D.5 for Charter, say that where a Practice submitted a buy back notice on or after 6 November 2019, amounts referable to commissions were progressively reduced in calculating the value of client register rights until they ceased being paid on 1 January 2021;

Particulars

Charter Buy out option changes dated 8 August 2019
(AMP.5800.0103.3375).

- 94D.6 for Hillross, say that amounts referable to commissions were included in the valuation of client register rights until they ceased being paid;

Particulars

Hillross Register and Buy Back changes document dated 8 August 2019
(AMP.5800.0106.8867).

94D.7 otherwise deny the allegations in the paragraph.

94E. In answer to the allegations in paragraph 94E of the Claim, the Respondents say that during the Relevant Period:

94E.1 AMP had an advice monitoring and supervision framework to monitor the conduct of AMP Authorised Representatives (**Advice Monitoring and Supervision Framework**);

94E.2 the Advice Monitoring and Supervision Framework was subject to periodic improvement, development and review;

94E.3 the Advice Monitoring and Supervision Framework included the following functions:

94E.3.1 conducting audits of AMP Authorised Representative client files in accordance with the relevant Audit Standards in force at the time (**Advice Audits**);

94E.3.2 reviewing advice documents prior to client presentation to ensure clients received accurate information and quality advice (**Advice Vetting**);

94E.3.3 reviewing customer complaints in relation to the quality of advice received from AMP Authorised Representatives;

94E.3.4 administering the consequence management framework as it related to AMP Authorised Representatives; and

94E.3.5 providing the key infrastructure to support AMP's aligned advice practices licensees to assist AMP Authorised Representatives in providing advice;

94E.4 Advice Audits examined, among other things:

94E.4.1 the basis of advice provided to the client;

94E.4.2 whether a compliant advice document was provided to the client;

94E.4.3 whether the AMP Authorised Representative acted in the client's best interests;

- 94E.4.4 whether the AMP Authorised Representative acted within the scope of their authority;
- 94E.4.5 whether fees were disclosed to the client; and
- 94E.4.6 for clients who had entered into an ongoing service agreement, whether the ongoing services had been provided as agreed; and

Particulars

- A. Audit Standards v1 June 2014 (AMP.6000.0007.1931).
- B. Audit Standards v1.1 October 2014 (AMP.4000.0481.2060).
- C. Audit Standards v1.2 February 2015 (AMP.2500.0001.0208).
- D. Audit Standards v1.3 March 2015 (AMP.6000.0007.1385).
- E. Audit Standards v1.4 April 2015 (AMP.4000.0481.2447).
- F. Audit Standards v1.5 May 2015 (AMP.4000.0481.2486).
- G. Audit Standards v1.6 February 2016 (AMP.6000.0007.1956).
- H. Audit Standards v1.7 September 2016 (AMP.6000.0007.2346).
- I. Audit Standards v2.0 July 2017 (AMP.6600.0001.0171).
- J. Audit Standards v2.1 July 2017 (AMP.6600.0001.0172).
- K. Audit Standards v2.3 November 2017 (AMP.6000.0007.3481).
- L. Audit Standards v2.4 June 2018 (AMP.4000.0477.0111).
- M. Audit Standards v2.4 June 2018 (AMP.4000.0481.3739).
- N. Audit Standards v2.4.1 January 2019 (AMP.4000.0088.1461).
- O. Audit Standards v2.5 January 2020 (AMP.6100.0001.1075).
- P. Audit Standards v2.5.1 May 2020 (AMP.6600.0001.0173).
- 94E.5 otherwise deny the allegations in the paragraph.
- 94F. The Respondents deny the allegations in paragraph 94F of the Claim and:

- 94F.1 refer to and repeat paragraph 94E above; and
- 94F.2 say that during the Relevant Period, audits were deferred for numerous reasons including where AMP Authorised Representatives had not provided advice during the period the subject of the audit, were on leave or were subject to vetting requirements.

Particulars

- A. Quarterly Advice Update – Q3 2016 (AMP.0005.0010.6393 at .0083).
- B. Quarterly Advice Update – Q4 2016 (AMP.6000.0005.3211 at .0098).
- C. Quarterly Advice Update – Q1 2017 (AMP.6000.0005.5113 at .0096).

94G. In answer to the allegations in paragraph 94G of the Claim, the Respondents:

- 94G.1 say that prior to 1 July 2013, changes were made to the existing vetting process including to require the vetting of at least three of each authorised representative's documents subject to the best interests duty requirements introduced on and from 1 July 2013 (**2013 Vetting Amendments**);

Particulars

- A. Memorandum for Steven Helmich and Simon Wallace dated 13 June 2013 (AMP.0005.0008.5883 at .0022).
- B. Section 961B of the Corporations Act.

94G.2 admit the allegations in paragraph 94G.2 of the Claim and say further that the 2013 Vetting Amendments were more comprehensive than what was required by the best interests duty requirements;

94G.3 otherwise deny the allegations in the paragraph.

94H. In answer to the allegations in paragraph 94H of the Claim, the Respondents:

- 94H.1 refer to and repeat paragraph 94G above;
- 94H.2 admit that on about 12 July 2013, the 2013 Vetting Amendments were amended;
- 94H.3 otherwise deny the allegations in the paragraph.

94I. In answer to the allegations in paragraph 94I of the Claim, the Respondents:

- 94I.1 deny the allegations in paragraph 94I of the Claim;
- 94I.2 refer to and repeat paragraphs 94E to 94H above;
- 94I.3 say further that the vetting requirements and processes were subject to monitoring and to multiple updates between 12 July 2013 and January 2021;

Particulars

- A. Vetting Policy v1 March 2014 (AMP.6600.0001.0151).
- B. Vetting Policy v1 April 2014 (AMP.6600.0001.0152).
- C. Vetting Standards & Requirements v2.0 August 2014 (AMP.6600.0001.0156).
- D. Vetting Standards & Requirements v2.1 February 2015 (AMP.6600.0001.0153).
- E. Vetting Standards & Requirements v2.2 February 2015 (AMF.3010.0004.0059).
- F. Vetting Standards & Requirements v2.3 July 2015 (AMP.6600.0001.0160).
- G. Vetting Standards & Requirements v2.4 October 2015 (AMP.6600.0001.0163).
- H. Vetting Standards & Requirements v2.5 March 2017 (AMP.6000.0007.3818).
- I. Vetting Standards and Requirements v3.5 May 2019 (AMP.6600.0001.0149).
- J. Vetting Standards and Requirements v3.6 January 2020 (AMP.6600.0001.0150).
- K. Vetting Standards and Requirements v3.7 September 2020 (AMP.6600.0001.0157).
- L. Vetting Standards and Requirements v3.9 January 2021 (AMP.6600.0001.0158).

94J. In answer to the allegations in paragraph 94J of the Claim, the Respondents:

- 94J.1 admit that from around June 2018, the Audit 2.0 Project was implemented to improve the audit processes, policies and procedures of Advice Audit;
- 94J.2 admit that the audit checklists in force prior to the Audit 2.0 Project were reviewed and revised;
- 94J.3 otherwise deny the allegations in the paragraph.
- 94K. The Respondents deny the allegations in paragraph 94K of the Claim.
- 94M. In answer to the allegations in paragraph 94M, the Respondents:
- 94M.1 refer to the further particulars provided by the Applicants in Piper Alderman's letter of 25 January 2024;
- 94M.2 admit that at certain times during the Relevant Period, the AMP Licensees became aware that there were particular instances during the Relevant Period where fees for services had been charged in circumstances set out in paragraph 94O.2 below and where the client did not receive some or all of the relevant services from the AMP Authorised Representative (or where there was insufficient evidence of the provision of such services);

Particulars

- A. AMP 2018 Annual Report (20 March 2019) at page 134.
- B. AMP Group Holdings Directors' report and financial report FY 31 December 2018 (17 April 2019) at pages 71 to 72).
- C. AMP 2019 Annual Report (23 March 2020) at pages 125 and 132).
- D. AMP Group Holdings FY19 Financial Statements (1 May 2020) at page 72.
- E. AMP 2020 Annual Report (10 March 2021) at pages 128 and 134.
- F. AMP 2021 Annual Report (8 March 2022) at page 150.
- 94M.3 say that during the Relevant Period, the AMP Licensees implemented a large scale customer review and remediation program established to identify and compensate clients who suffered loss or detriment where clients had been charged a fee without the provision of services (or where there was insufficient evidence of the provision of services);

Particulars

The Respondents refer to and repeat the particulars to paragraph 94M.2 above.

- 94M.4 say further that from around 2020, AMP Licensees introduced annual agreements for clients receiving services which required the AMP Authorised Representatives and clients to explicitly agree the services to be provided and fees to be paid on a yearly basis;

Particulars

- A. Annual advice and service agreements policy dated December 2019 (AMF.3014.0001.0279).
- B. AMP announcement “AMP to phase out ongoing advice agreements” dated 6 December 2019.

- 94M.5 refer to and repeat paragraphs 71, 72, 73 and 77 of the Defence above;

- 94M.6 otherwise deny the allegations in the paragraph.

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

- 94N.1 refer to and repeat paragraph 94E.4 above;

- 94N.2 say further that the AMP Licensees had a number of policies in place during the Relevant Period that applied to their AMP Authorised Representatives and the charging of ongoing service fees.

Particulars

For example:

- A. The Service Agreements QAF dated June 2015 (AMF.3014.0001.1001).
- B. The Charging for your advice and services policy dated June 2015 (AMF.3010.0001.1203).
- C. AMPFP Professional Standards Manuals dated August 2018 (AMF.3014.0001.7774).
- D. Hillross Professional Standards Manuals dated July 2014 (AMF.3014.0001.3645).

- E. The Annual advice and service agreements policy dated December 2019 (AMF.3014.0001.0279).

94O. In answer to the allegations in 94O, the Respondents:

- 94O.1 refer to and repeat paragraphs 94M and 94N above;
- 94O.2 admit that any instances where a client was charged a fee for a service in circumstances where they did not receive the relevant services from an AMP Authorised Representative that occurred during the Relevant Period arose by reason of a failure of a particular AMP Authorised Representative to provide the services that were agreed to be provided in return for the fees charged; and
- 94O.3 otherwise deny the allegations in the paragraph.

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:

- 96.1A refer to and repeat paragraph 39 above;

- 96.1 say that during the Relevant Period until around 1 October 2017, the Flexible Lifetime – Protection Plan product was available on the AMP Licensees’ APLs to be recommended to new policy holders;
- 96.2 say that during the Relevant Period, AMP Flexible Lifetime – Super and AMP Flexible Super were on the AMP Licensees’ APLs;
- 96.2A say that in respect of the insurance cover available through AMP Flexible Super, “Super Protection” insurance cover replaced “Flexible Protection” insurance cover for new members from 2 April 2014;
- 96.3 otherwise deny the allegations in the paragraph.
- 96A. In answer to the allegations in paragraph 96A of the Claim, the Respondents:
- 96A.1 refer to and repeat paragraph 39 above;
- 96A.2 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:
- 96A.2.1 the needs, objectives and circumstances of the person at a particular point in time including their age, sex, occupation, if any, smoking status, medical history and pastimes;
- 96A.2.2 what other financial products they held;
- 96A.2.3 what was disclosed to any person providing financial advice to the person;
- 96A.3 say that in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraph 96A of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

- 96A.4 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members; and
- 96A.5 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 67.1 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 as 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 as 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).

98B. The Respondents deny the allegations in paragraph 98B of the Claim and say further that:

98B.1 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:

98B.1.1 the needs, objectives and circumstances of the person at a particular point in time including their age, sex, occupation, if any, smoking status, medical history and pastimes;

98B.1.2 what other financial products they held;

98B.1.3 what was disclosed to any person providing financial advice to the person;

98B.2 in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraph 98B.3 of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
 - B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.
- 98B.3 they are unable to plead to unparticularised allegations regarding unidentified Group Members.
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 67.1 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; and
 - 101.4 say further that during the Relevant Period, AMP Authorised Representatives were able to recommend platforms (as well as investment and other products) which were not on the APLs by seeking approval from AMP Advice Research.
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 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 as 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.
- 103AA. In answer to the allegations in paragraph 103AA of the Claim, the Respondents:
- 103AA.1 say that whether a product was 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:
 - 103AA.1.1 the needs, objectives and circumstances of the person at a particular point in time including their actual sum insured, age, sex, occupation, if any, smoking status, medical history and pastimes;
 - 103AA.1.2 what other financial products they held;
 - 103AA.1.3 what was disclosed to any person providing financial advice to the person;

Platform and investment products

- 103AA.2 say that during the Relevant Period, the AMP Licensees' benchmarking process for platforms and investment products on the APLs included a review of products based on the following key criteria:
- 103AA.2.1 a review of features and functionality of products to ensure each product meets the common needs and objectives of clients serviced by the AMP Authorised Representative;
 - 103AA.2.2 a review of relative product costs across a number of price points to ensure the products are competitive on a cost basis;
 - 103AA.2.3 a sector review of investment products on the APLs;
- 103AA.3 admit that during the Relevant Period for platform and investment products on the APLs, product price points were grouped into four 'outcomes' or 'tiers' as follows:
- 103AA.3.1 **Outcome 1:** where the product cost is in the first or second quartile relative to its peer group or competitor set;
 - 103AA.3.2 **Outcome 2:** where the price difference is less than or equal to 10% more than the average price, or within \$100 per annum more than the average price;
 - 103AA.3.3 **Outcome 3:** where the price difference is greater than 10% and less than 15% more than the average price; and
 - 103AA.3.4 **Outcome 4:** where the product cost of the benchmarked product is greater than 15% more than the average price;
- 103AA.4 say that during the Relevant Period, the product price points under the Benchmarking Guidelines for platforms and investment products on the APLs depended on the client's account balance and investment options;
- 103AA.5 say that during the Relevant Period, for platform and investment products, where the product price point was categorised as Outcome 3, the guidance given to AMP Authorised Representatives when recommending the product included a requirement to:

- 103AA.5.1 demonstrate that the product had certain benefits or features which were not available in a product rated Outcome 1 or Outcome 2 and which the client particularly values;
- 103AA.5.2 ensure the client understands, and is prepared to pay for, the benefits or features referred to in subparagraph 103AA.5.1;
- 103AA.6 say that during the Relevant Period, for platforms and investment products, where the product price point was categorised as Outcome 4, the guidance given to AMP Authorised Representatives when recommending the product included that, it was necessary to:
- 103AA.6.1 comply with the same requirements for an Outcome 3 rated product (see paragraph 103AA.5 above); and in addition,
- 103AA.6.2 inform the client:
- a. that the benefit or feature they value (which is not available in another approved product) may be available in a cheaper product on the market; or
 - b. where the Authorised Representative was reviewing an existing client that holds the product, that there may be a cheaper approved product available to them and offer to consider this as part of the client's review;

Life risk insurance products

- 103AA.7 say that during the Relevant Period, the AMP Licensee's benchmarking approach for life risk insurance products on the APLs was formulated based on two key areas:
- 103AA.7.1 a review of definitions and features to ensure each product meets the common needs and objectives of clients serviced by the AMP Authorised Representative;
- 103AA.7.2 a review of premium costs across a number of product scenarios to ensure that products are competitive on a cost basis;

103AA.8 admit that during the Relevant Period until 2016, product price points for life risk insurance products on the APLs were grouped into three 'tiers' as follows:

103AA.8.1 Tier 1: where the premium is less than or equal to the average price relative to its competitors;

103AA.8.2 Tier 2: where the premium is higher than the average price (up to 15%);

103AA.8.3 Tier 3: where the premium is greater than 15% more than the average price;

103AA.9 say that from 2016 until the end of the Relevant Period, product price points for life risk insurance products on the APLs were grouped into three 'tiers' as follows:

103AA.9.1 Tier 1: where the premium is less than or equal to the average price relative to its competitors;

103AA.9.2 Tier 2: where the premium is higher than the average price (up to 10%);

103AA.9.3 Tier 3: where the premium is greater than 10% more than the average price;

103AA.10 say that during the Relevant Period pricing for life risk insurance products:

103AA.10.1 was generally secondary to benchmarking the product definitions which were generally key in determining whether a claim is paid;

103AA.10.2 depended on a range of factors including the actual sum insured, age, sex, occupation, if any, smoking status, medical history and pastimes of the insured;

103AA.11 otherwise deny the allegations in the paragraph.

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

103B.1 say that in the absence of proper particularisation of what is meant by "best value product for clients" and "best value products for clients", the pleading

in subparagraphs 103B.1 to 103B.3 of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

103B.2 refer to and repeat paragraphs 103AA above and 103E below;

103B.3 otherwise deny the allegations in the paragraph.

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

103C.1 refer to and repeat paragraph 103B above; and

103C.2 otherwise deny the allegations in the paragraph.

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

103D.1 refer to and repeat section C and paragraphs 96.1, 103A and 103AA above;

103D.2 say that AMP Advice Research applied various ratings to products on the APLs including “buy”, “hold” or “sell on review” as set out in the Advice Research Process Manuals;

Particulars

Refer to and repeat the particulars to paragraph 98A.3.

103D.3 say that where a product was no longer available to be recommended to new clients, it was sometimes referred to within the AMP Group as being on a “no-buy” list, being a “closed” or “legacy” product, and/or as being “off-sale”;

103D.4 say that product issuers may decide to designate a particular product as “off-sale” (i.e. not available to be acquired by a new client) for a number of reasons, including:

103D.4.1 where it is no longer economical to the product issuer to offer that product to new customers, for example due to reducing

member numbers or because of aged technology systems which are difficult and costly to maintain or update;

103D.4.2 due to legislative changes (including in relation to the taxation or social security treatment of particular products) such as Term Allocated Pensions which offer certain grandfathered social security benefits that are no longer available;

103D.4.3 due to acquisitions by the product issuer (involving acquisitions of products of the former issuer) or launch of new products whereby multiple products of a similar nature are held and some products are taken off sale. One reason for this may be to reduce market confusion; or

103D.4.4 where the product is no longer regarded as offering contemporary features commensurate with those offered by competitors, such as older annuity style products or products offering nil or limited investment choice;

103D.5 say that the Endowment Personal Plan was closed to new business from 31 December 1999 and the Whole of Life Plan was closed to new business from 31 December 2003;

103D.6 say that in around April 2015, the PortfolioCare investment platforms were rated 'red' or Outcome 4 under the Benchmarking Guidelines across most price points, although some price points were rated 'green' (Outcome 2) or 'amber' (Outcome 3);

103D.7 say that in the absence of proper particularisation as to how AMP "identified" products as closed products, the pleading in paragraph 103D.3 of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

103D.8 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

103D.9 otherwise deny the allegations on the paragraph.

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

103E.1 refer to and repeat paragraphs 103AA and 103D above;

103E.2 say that the pleading in relation to the AMP Licensees' knowledge in paragraphs 103E.1 and 103E.2 of the Claim is deficient because it does not give adequate particulars as to the facts and circumstances from which the AMP Licensees ought to have acquired the alleged knowledge;

Particulars

A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.

B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

103E.3 in relation to paragraph 103E.3:

103E.3.1 say that the AMP Licensees provided guidance on the obligations of Authorised Representatives including advising them that they were not required to search through their client base to assess all clients with legacy products and provide them all with new product recommendations;

103E.3.2 say further the guidance referred to in paragraph 103E.3.1 above also stated that new product recommendations may be assessed at the time of a client review;

Particulars

A. Best Interests Duty QAF dated April 2014 (AMF.3010.0001.1945 at .1971).

B. Best Interests Duty QAF dated June 2015 (AMF.3014.0001.0490 at .0525).

103E.4 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

103E.5 otherwise deny the allegations in the paragraph.

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

103F.1 refer to and repeat paragraphs 53C and 103E above;

103F.2 say that the pleading as to the AMP Licensees' state of mind is deficient because it does not give adequate particulars as to the facts and circumstances from which the AMP Licensees ought to have acquired the alleged state of mind;

Particulars

A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.

B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

103F.3 otherwise deny the allegations in the paragraph.

JA. RELATED SUPERANNUATION FUND TRUSTEES

JA.1 Third Party Insurance in Super Requirements

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

104.1 admit that during the Relevant Period 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 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:
- 107.2.1 the needs, objectives and circumstances of the person at a particular point in time including their age, sex, occupation, if any, smoking status, medical history and pastimes;
- 107.2.2 what other financial products they held;
- 107.2.3 what was disclosed to any person providing financial advice to the person;
- 107.3 say that in the absence of proper particularisation of what is meant by “substantially better or equivalent”, the pleading in paragraph 107.3 of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.
- 107.4 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members;
- 107.5 otherwise deny the allegations in the paragraph.

J.2 AMP Life Products held in ASL Super Funds

- 107A. In answer to the allegations in paragraph 107A of the Claim, the Respondents refer to and repeat paragraph 39 above and:
- 107A.1 as to paragraph 107A.1, say that as trustee of each of ASST and ART during the Relevant Period until 15 May 2020, ASL offered retail and employer-sponsored superannuation products and was accountable to administer the assets of each of ASST and ART in accordance with the terms of the respective trusts for the benefit of the respective members of ASST and ART

from time to time and to manage each of ASST and ART for the primary purposes of:

- 107A.1.1 providing benefits on or after a member's retirement;
 - 107A.1.2 providing ancillary death benefits for members and their beneficiaries; and
 - 107A.1.3 providing ancillary total and permanent disablement benefits and salary continuance benefits for members;
- 107A.2 as to paragraph 107A.2, say that as trustee of each of ASST and ART during the Relevant Period until 15 May 2020, ASL offered certain members of ASST and ART insurance cover through or in their superannuation accounts via:
- 107A.2.1 insurance policies issued to ASL by AMP Life in respect of ART; and
 - 107A.2.2 insurance policies issued to ASL by AMP Life and other insurers in respect of ASST;
- 107A.3 as to paragraph 107A.3, say that as trustee of each of ASST and ART during the Relevant Period until 15 May 2020, ASL held group insurance policies in relation to insurance products that could be held by ASL on behalf of the respective members of ASST and/or ART;
- 107A.4 as to paragraph 107A.4, say that as trustee of each of ASST and ART during the Relevant Period until 15 May 2020, ASL could, subject to the terms of the relevant agreements and the general law, seek to negotiate the terms of the existing group insurance policies with AMP Life and terminate the arrangements with AMP Life;
- 107A.5 admit the allegation in paragraph 107A.5 of the Claim in respect of the Relevant Period until 15 May 2020;
- 107A.6 as to paragraph 107A.6, say that ASL, pursuant to the ASST and ART trust deeds, was entitled to pay for premiums in respect of members' interests in a group policy of life insurance issue by AMP Life from members' funds and say further that AMP Life as administrator of the respective superannuation

funds debited the relevant amounts from members' accounts in payment of the insurance premiums;

107A.7 admit the allegations in paragraphs 107A.7 and 107A.9 of the Claim in respect of the Relevant Period until 15 May 2020; and

107A.8 otherwise deny the allegations in the paragraph.

107B. In answer to the allegations in paragraph 107B of the Claim the Respondents, in respect of the Relevant Period until 15 May 2020:

107B.1 as to paragraph 107B.1, admit that ASL, AMP Life and AMP Services Limited were parties to the Master Outsourcing Agreement and say further that:

107B.1.1 the Master Outsourcing Agreement ceased to have effect on and from 15 May 2020;

107B.1.2 they will rely upon the Master Outsourcing Agreement for its full terms;

Particulars

- A. Master Outsourcing Agreement Amending Deed between ASL, AMP Life and AMP Services Limited (AMP.6000.0190.6472).
- B. Deed of Termination relating to the Master Outsourcing Agreement and Master Resourcing Agreement dated 13 May 2020 (AMF.3021.0001.0414).

107B.2 as to paragraph 107B.2, admit that AMP Life undertook to provide the services under the Master Outsourcing Agreement on terms which included that services would be provided in accordance with, and as permitted by, ASL's duties and obligations as a trustee under general law, to the extent such duties and obligations directly concerned the obligations of AMP Life in relation to the provisions of the services;

Particulars

Clause 2.2(a), clause 2.3(b).

107B.3 as to paragraph 107B.3, say that AMP Life, in its capacity as a life insurer, issued life insurance policies to ASL in respect of various products, including

various employer-sponsored superannuation products and AMP Flexible Lifetime - Super and AMP Flexible Super;

- 107B.4 as to paragraph 107B.4, say that AMP Life provided services to ASL under the Master Outsourcing Agreement in consideration for amounts payable under the Superannuation Policies issued by AMP Life to ASL; and

Particulars

For example, AMP Flexible Lifetime - Super (Personal) and AMP Flexible Super (Risk) Superannuation Policy Document Policy No.20555 Amending Deed (AMP.4000.5001.0018).

- 107B.5 otherwise deny the allegations in the paragraph.

- 107C. In answer to the allegations in paragraph 107C of the Claim the Respondents say that during the Relevant Period until 15 May 2020:

- 107C.1 as to paragraph 107C.1, AMP Life as administrator of ASST and ART was responsible for the day-to-day administration and operations of ASST and ART;

- 107C.2 as to paragraph 107C.2 refer to and repeat paragraph 107A.7 above and say further that the payments of fees by ASL to AMP Life were made in accordance with relevant Superannuation Policies issued by AMP Life to ASL;

Particulars

For example, AMP Flexible Lifetime - Super (Personal) and AMP Flexible Super (Risk) Superannuation Policy Document Policy No.20555 Amending Deed (AMP.4000.5001.0018).

- 107C.3 as to paragraph 107C.3 refer to and repeat paragraphs 39, 40A and 66 above;

- 107C.4 as to paragraph 107C.4, say that:

- 107C.4.1 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:

- a. the needs, objectives and circumstances of the person at a particular point in time including their age, sex, occupation, if any, smoking status, medical history and pastimes;
- b. what other financial products they held;
- c. what was disclosed to any person providing financial advice to the person; and

107C.4.2 in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraph 107C.4 of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

107C.5 as to paragraph 107C.5, ASL received payment from AMP Life of fees in consideration for acting as trustee of ASST and ART pursuant to the terms of the Master Resourcing Agreement dated on or around 12 August 2005 between ASL, AMP Life and AMP Services Limited (**Master Resourcing Agreement**) (on which the Respondents rely for its full terms) which were calculated based on the number of members of the superannuation funds of which it was the trustee;

Particulars

Clause 5 and Schedule A of the Master Resourcing Agreement (AMP.6000.0125.0252 at .0261 and .0269).

107C.6 as to paragraph 107C.6, the life insurance agreements referred to in paragraph 107B above remained in force until 15 May 2020;

107C.7 as to paragraph 107C.7, refer to and repeat paragraph 106 above;

107C.8 otherwise deny the allegations in the paragraph.

107D. In answer to the allegations in paragraph 107D of the Claim, the Respondents say that during the Relevant Period until 15 May 2020:

- 107D.1 as to paragraph 107D.1, refer to and repeat 107C.1 above;
- 107D.2 admit the allegations in paragraphs 107D.2, 107D.3, 107D.4 and 107D.5 of the Claim;
- 107D.3 as to paragraph 107D.6, say that AMP Life's obligations under the Master Outsourcing Agreement were contractual and owed only to ASL;
- 107D.4 as to paragraph 107D.7, AMP Life communicated with members of ASST and ART in accordance with its obligations as administrator of those superannuation funds;
- 107D.5 as to paragraphs 107D.8 and 107D.9, say that annual insurer reviews were undertaken by ASL;

Particulars

- A. Trustees' IMF Operation document dated 18 September 2017 (AMP.6000.0255.0108 at .0123).
- B. Trustees Insurance Management Framework October 2015 (AMF.3021.0001.0076 at .0106).
- C. Trustees Insurance Management Framework October 2014 (AMF.3021.0001.0001 at .0031).
- D. Trustees Insurance Management Framework March 2014 (AMF.3021.0001.0038 at .0069).
- 107D.6 as to paragraph 107D.10 refer to and repeat paragraph 106 above; and
- 107D.7 otherwise deny the allegations in the paragraph.
- 107E. In answer to the allegations in paragraph 107E of the Claim, the Respondents:
- 107E.1 in respect of the First Applicant:
- 107E.1.1 refer to and repeat paragraphs 11, 15 and 16 above;
- 107E.1.2 admit that during the Relevant Period until 3 January 2019, the First Applicant held AMP Flexible Super, which was part of ART (and the First Applicant was a member of that fund);

- 107E.1.3 admit that during the Relevant Period until 3 January 2019, there was Flexible Protection insurance cover on the First Applicant's AMP Flexible Super account;
- 107E.2 in respect of the Third Applicant:
- 107E.2.1 refer to and repeat paragraphs 26, 31 and 31A above;
- 107E.2.2 admit that during the Relevant Period, the Third Applicant held AMP Flexible Lifetime – Super, which was part of ASST (and the Third Applicant was a member of that fund) until 15 May 2020;
- 107E.2.3 admit that during the Relevant Period, the Third Applicant held insurance cover through her AMP Flexible Lifetime – Super account;
- 107E.3 refer to and repeat paragraph 107C above;
- 107E.4 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:
- 107E.4.1 the needs, objectives and circumstances of the person at a particular point in time including their age, sex, occupation, if any, smoking status, medical history and pastimes;
- 107E.4.2 what other financial products they held;
- 107E.4.3 what was disclosed to any person providing financial advice to the person;
- 107E.5 say that in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraph 107E.3 of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

107E.6 say further that they are unable to plead to unparticularised allegations regarding unidentified Group Members; and

107E.7 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:

121.1A refer to and repeat paragraphs 55 and 64 above;

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;

121.1B admit that the June 2013 Advice and July 2014 Advice provided to the First Applicant by Mr Lang as an AMPFP Authorised Representative 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;

121.2A admit that the September 2016 Advice provided to the First Applicant by Mr Lang as an AMPFP Authorised Representative 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 admit that the 2015 Lodge SOA provided by Mr Snibson as a Charter Authorised Representative to the Third Applicant was financial product advice within the meaning of s 766B(1) of the Corporations Act;

121.4A admit that the 2016 Lodge Advice provided by Mr Snibson as a Charter Authorised Representative to the Third Applicant was financial product advice within the meaning of s 766B(1) of the Corporations Act;

121.5 admit that the 2019 Lodge Advice provided by Mr Snibson 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 deny 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;
 - 121.6A deny that any advice given to the Fourth Applicant in about March 1985 was financial product advice within the meaning of s 766B(1) of the Corporations Act;
 - 121.6B refer to and repeat paragraph 36A above and deny that any advice given to the Fourth Applicant prior to March 2005 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 paragraphs 32, 36A, 36F and 121 above;
 - 122.2 admit that each advice referred to in paragraphs 121.1 to 121.5 above was personal advice within the meaning of s 766B(3) of the Corporations Act;
 - 122.3 deny the allegations in the paragraph in so far as they concern the Fourth Applicant;
 - 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;
 - 123.2A admit that when Mr Lang provided the June 2013 Advice and the July 2014 Advice 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;
- 123.3A admit that when Mr Lang provided the September 2016 Advice 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 admit that when Mr Snibson provided the 2015 Lodge SOA to the Third Applicant, Mr Snibson as a Charter Authorised Representative provided a financial service, within the meaning of s 766A(1) of the Corporations Act, to the Third Applicant;
- 123.5A admit that when Mr Snibson provided the 2016 Lodge Advice to the Third Applicant, Mr Snibson as a Charter Authorised Representative provided a financial service, within the meaning of s 766A(1) of the Corporations Act, to the Third Applicant;
- 123.6 admit that when Mr Snibson provided the 2019 Lodge Advice to the Third Applicant, Mr Snibson 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 deny the allegations in the paragraph in so far as they concern 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 123.2 to 123.6 above were provided to, as the case may be, the First, Second and Third

Applicants as retail clients within the meaning of s 761G of the Corporations Act;

124.2A say that the definition of “retail client” under s 761G(1) of the Corporations Act was introduced by the FSR Act;

124.2B deny the allegations in the paragraph in so far as they concern the Fourth Applicant;

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:

125.1.1 the provision of the 2012 Stack SOA by Mr Lang to the First Applicant;

125.1.2 the provision of the June 2013 Advice to the First Applicant;

125.1.3 the provision of the 14 March 2001 LAFP by Mr Foster to the Fourth Applicant;

125.1.4 the provision of any advice to the Fourth Applicant in about March 1985;

125.1.5 the provision of any advice to the Fourth Applicant as alleged in paragraph 36A of the Claim;

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;

125.2A admit that in relation to the provision of the July 2014 Advice and September 2016 Advice to the First Applicant, 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 2015 Lodge SOA to the Third Applicant, Mr Snibson was the provider within the meaning of s 961(2) of the Corporations Act;
 - 125.4A admit that in relation to the provision of 2016 Lodge Advice to the Third Applicant, Mr Snibson was the provider within the meaning of s 961(2) of the Corporations Act;
 - 125.4B admit that in relation to the provision of 2019 Lodge Advice to the Third Applicant, Mr Snibson 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;
 - 126.2A admit that s 961B(1) applied to Mr Lang in relation to the July 2014 Advice and September 2016 Advice to the First Applicant;
 - 126.2B deny that s 961B(1) applied to Mr Lang in relation to the 2012 Stack SOA provided to the First Applicant;
 - 126.2C deny that s 961B(1) applied to Mr Lang in relation to the June 2013 Advice 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 Snibson in relation to the 2015 Lodge SOA provided to the Third Applicant;
 - 126.4A admit that s 961B(1) applied to Mr Snibson in relation to the 2016 Lodge Advice provided to the Third Applicant;
 - 126.4B admit that s 961B(1) applied to Mr Snibson in relation to the 2019 Lodge Advice 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;
 - 126.5A deny that s 961B(1) applied to Mr Foster in relation to the 14 March 2001 LAFP provided to the Fourth Applicant;
 - 126.5B deny that s 961B(1) applied to Mr Horlick in relation to any advice given in about March 1985 to the Fourth Applicant;
 - 126.5C deny that s 961B(1) applied to Mr Horlick in relation to the allegations made in paragraph 36A of the Claim;
 - 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, 51 and 54 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, 98B 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 1.2A, 47, 51, 122.3, 125.1 and 128 above;
 - 129.2A refer to the further particulars provided by the Applicants in Piper Alderman's letter of 25 January 2024;

- 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;
- 129.3A deny that Mr Lang failed to act in the best interests of the First Applicant in relation to the September 2016 Advice or July 2014 Advice 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 Snibson failed to act in the best interests of the Third Applicant in relation to 2015 Lodge SOA within the meaning of s 961B of the Corporations Act;
- 129.5A deny that Mr Snibson failed to act in the best interests of the Third Applicant in relation to 2016 Lodge Advice within the meaning of s 961B of the Corporations Act;
- 129.5B deny that Mr Snibson failed to act in the best interests of the Third Applicant in relation to 2019 Lodge Advice within the meaning of s 961B of the Corporations Act;
- 129.6 say that, in relation to each of the 2015 Stack SOA and the 2014 Winterton SOA, Mr Lang and Mr Spears, 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 and Mr Spears 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 and Mr Spears by instructions from these Applicants and by the subject matter of the advice sought by these Applicants.
- B. Mr Lang and Mr Spears identified the subject matter of the advice sought by, respectively, the First Applicant and the Second 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 and Mr Spears had the expertise to provide, respectively, the 2015 Stack SOA, the September 2016 Advice and the 2014 Winterton SOA.
- D. Mr Spears conducted a reasonable investigation into financial products that might achieve, respectively, the Second 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 and Mr Spears based all judgments in advising, respectively, the First Applicant and the Second Applicant on the relevant circumstances of the relevant Applicant.

129.7 [not used]

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 [not used]

130.2 [not used]

130.3 deny that, in the 2015 Stack SOA, the July 2014 Advice or the September 2016 Advice, Mr Lang recommended that the First Applicant renew and continue to hold AMP Flexible Super – Flexible Protection at Excess Premiums;

130.3A deny that, in the 2019 Lodge Advice, Mr Snibson recommended that the Third Applicant renew and continue to hold AMP Flexible Lifetime – Super at Excess Premiums;

130.4 refer to and repeat paragraphs 67.1 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 130.3 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 pages 7 to 8, 14, 18, 26 to 27, 38.

- 130.7 refer to and repeat Sections G and J and paragraphs 128 and 129.3 to 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 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 129 to 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;
 - 134.3A admit that s 961J(1) of the Corporations Act applied to Mr Lang in relation to the July 2014 Advice and September 2016 Advice 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 Snibson in relation to the 2015 Lodge SOA provided to the Third Applicant;
 - 134.5A admit that s 961J(1) applied to Mr Snibson in relation to the 2016 Lodge Advice provided to the Third Applicant;
 - 134.5B admit that s 961J(1) applied to Mr Snibson in relation to the 2019 Lodge Advice provided to the Third Applicant;
 - 134.6 deny that s 961J(1) of the Corporations Act applied to:
 - 134.6.1 the provision of the 2012 Stack SOA by Mr Lang to the First Applicant;
 - 134.6.2 the provision of the June 2013 Advice by Mr Lang to the First Applicant;
 - 134.6.3 Mr Foster in relation to the 14 March 2001 LAFP provided to the Fourth Applicant;
 - 134.6.4 the provision of any advice to the Fourth Applicant in about March 1985;
 - 134.6.5 the provision of any advice to the Fourth Applicant as alleged in paragraph 36A of the Claim;
 - 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 pages 39 to 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 and .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 pages 17, 20, 22 to 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 and .0824).

- 135.4 say that, in relation to the 2015 Lodge SOA, Mr Snibson disclosed the commissions in relation to the Third Applicant's AMP Elevate Policy;

Particulars

- A. 2015 Lodge SOA at page 11.
- B. [not used]

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

- 135.6A deny that, in relation to the provision of the September 2016 Advice or the July 2014 Advice, 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 2015 Lodge SOA, Mr Snibson acted contrary to s 961J(1) of the Corporations Act;
 - 135.8A deny that, in relation to the provision of the 2016 Lodge Advice, Mr Snibson acted contrary to s 961J(1) of the Corporations Act;
 - 135.8B deny that, in relation to the provision of the 2019 Lodge Advice, Mr Snibson 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;
 - 135.9A refer to and repeat paragraphs 1.2A and 134.6 above; and
 - 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 retain his Flexible Protection insurance cover within AMP Flexible Super;
 - 136.1A say that, in the 2019 Lodge Advice, Mr Snibson recommended that the Third Applicant retain her AMP Flexible Lifetime – Super account with the existing life insurance cover;
 - 136.2 refer to and repeat paragraphs 67.1 to 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 unidentified Group Members;
 - 136.5A refer to and repeat paragraphs 134.6 and 135.6 to 135.8B above; and
 - 136.6 otherwise deny the allegations in the paragraph.

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

137.1 refer to and repeat Section H and paragraphs 125.1 and 134 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 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 44A to 44C, 47A, 51, 51A, 54, 54A, 86 to 94F, 91, 94F to 94O and 95 to 107 above;

140.2 say that no particulars of knowledge have been provided;

140.3 otherwise deny the allegations in the paragraph.

141. The Respondents deny the allegations in paragraph 141 of the Claim, and refer to and repeat paragraphs 44A to 44C, 47A, 51, 51A, 54, 54A, 86 to 94F, 91, 94F to 94O, 95 to 107, 129 to 131, 135 to 137 and 140 above.

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

142.1 refer to and repeat paragraphs 47A, 51A, 54A, 67.1 to 67.3, 95 to 107, 130, 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 142.2 to 142.3 of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.
- 142.3 say otherwise that they are unable to plead to unparticularised allegations regarding the First and Third Applicants 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.
- 143A. In answer to the allegations in paragraph 143A of the Claim, the Respondents refer to and repeat paragraph 141 above and otherwise deny the allegations in the paragraph.
- 143B. In answer to the allegations in paragraph 143B of the Claim, the Respondents:
- 143B.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:
- 143B.1.1 the needs, objectives and circumstances of the person at a particular point in time including their age, sex, occupation, if any, smoking status, medical history and pastimes;
- 143B.1.2 what other financial products they held;
- 143B.1.3 what was disclosed to any person providing financial advice to the person;

- 143B.2 say that in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraph 143B.2 of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

- 143B.3 otherwise deny the allegations in the 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 general law and the relevant statutory scheme require any and all such compensation to be paid into the relevant person’s superannuation balance, to ensure that the superannuation trust is made whole and that 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 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.
147. [not used]
148. [not used]
149. [not used]
150. [not used]
151. [not used]
152. [not used]
153. [not used]
154. [not used]
155. [not used]
156. [not used]
157. [not used]
158. [not used]

159. [not used]

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 and Third Applicants 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, 144.3, 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 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

Particulars D to paragraph 1.3 above are repeated.

- 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 paragraphs 1.2 and 144.3 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 from the Flexible Protection insurance cover within the AMP Flexible Super products held by those Applicants were paid from their respective superannuation funds;
- 173.2 say further that to the extent an insurance premium or fee for the Applicants' and any Group Member's financial product was paid from a superannuation fund, and that Applicant or Group Member has no present or immediate right to payment from their superannuation fund, then the Applicant or Group Member 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 general law and the relevant statutory scheme require any and all such compensation to be paid into the relevant person's superannuation balance, to ensure the superannuation trust is made whole and that 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 and refer to and repeat paragraph 144.3 above.

174A. In answer to the allegations in paragraph 174A of the Claim, the Respondents:

174A.1 admit that, from time to time, ASL owed fiduciary duties to members of each of ASST and ART arising from and during the period in which ASL acted as trustee of ASST and ART;

174A.2 say that as a result of the fiduciary duties ASL owed to members of each of ASST and ART:

174A.2.1 a duty to avoid a conflict between ART's duty as trustee of each of ASST and ART and its own interest; and

174A.2.2 a duty to avoid obtaining an unauthorised benefit or gain by reason of, or use of, its position as trustee,

in relation to matters within the scope of its role as trustee;

174A.3 say that the fiduciary duties owed by ASL to members of each of ASST and ART did not include positive duties in relation to the offer to certain members of ASST and ART of insurance cover through or in their superannuation accounts via insurance policies issued to ASL by AMP Life or other insurers; and

174A.4 otherwise deny the allegations in the paragraph.

174B. In answer to the allegations in paragraph 174B of the Claim, the Respondents:

174B.1 say that the rolled up allegations against ASL, AMP Life, the Licensees and the Authorised Representatives are embarrassing and liable to be struck out;

174B.2 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:

- 174B.2.1 the needs, objectives and circumstances of the person at a particular point in time including their age, sex, occupation, if any, smoking status, medical history and pastimes;
- 174B.2.2 what other financial products they held;
- 174B.2.3 what was disclosed to any person providing financial advice to the person;
- 174B.3 say that in the absence of proper particularisation of what is meant by “substantially equivalent”, “better” and “best insurance product”, the pleading in paragraph 174B of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.
- 174B.4 say further that the decision to obtain or continue to hold insurance within the relevant superannuation product offered within ASST and ART was a decision taken by the individual in their own interest and was not a decision taken by ASL and ASL gave no personal advice to the individual in relation to that decision;
- 174B.5 otherwise deny the allegations in the paragraph.
- 174C. In answer to the allegations in paragraph 174C of the Claim, the Respondents:
 - 174C.1 refer to and repeat paragraphs 106, 107C to 107E and 174B above;
 - 174C.2 deny the allegation that AMP Life or the AMP Licensees obtained an improper benefit; and
 - 174C.3 otherwise deny the allegations in the paragraph.
- 174CA. The Respondents deny the allegations in paragraph 174CA of the Claim, and refer to and repeat paragraphs 107B to 107D above.
- 174D. The Respondents deny the allegations in paragraph 174D of the Claim and refer to and repeat paragraph 174CA above.

174E. In answer to the allegations in paragraph 174E of the Claim, the Respondents deny the allegations in the paragraph and:

174E.1 refer to and repeat paragraph 174D above;

174E.2 say that AMP Life provided services as administrator of ASST and ART to ASL;

174E.3 say that AMP Life issued insurance policies to ASL in respect of various products; and

174E.4 say that AMP Life did not owe any fiduciary duties to members of ASST and ART as either an insurer or administrator or otherwise.

174F. In answer to the allegations in paragraph 174F of the Claim, the Respondents:

174F.1 refer to and repeat paragraphs 174D and 174E above; and

174F.2 deny the allegations in the paragraph.

174G. In answer to the allegations in paragraph 174G of the Claim, the Respondents:

174G.1 refer to and repeat paragraphs 174D, 174E and 174F above;

174G.2 deny the allegations in the paragraph.

174H. In answer to the allegations in paragraph 174H of the Claim, the Respondents:

174H.1 refer to and repeat paragraphs 144.3, 174D, 174E and 174F above; and

174H.2 deny the allegations in the paragraph.

174I. In answer to the allegations in paragraph 174I of the Claim, the Respondents:

174I.1 refer to and repeat paragraphs 144.3, 174D, 174E and 174F above; and

174I.2 deny the allegations in the paragraph.

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) r 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 and Third Applicants 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, 144.3, 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 144.3, 175, 176 and 178 above;
- 179.2 otherwise deny the allegations in the paragraph.
- 179A. In answer to the allegations in paragraph 179A of the Claim, the Respondents:
- 179A.1 refer to and repeat paragraphs 40A, 174A, 174B, 174C, 174D, 174E and 174F above; and
- 179A.2 deny the allegations in the paragraph.
- 179B. In answer to the allegations in paragraph 179B of the Claim, the Respondents:
- 179B.1 refer to and repeat paragraphs 40A, 174A, 174B, 174C, 174D, 174E and 174F above; and
- 179B.2 deny the allegations in the paragraph.

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

179C.1 refer to and repeat paragraphs 40A, 174A, 174B, 174C, 174D, 174E, 174F, 179A and 179B above; and

179C.2 deny the allegations in the paragraph.

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

179D.1 refer to and repeat paragraphs 40A, 144.3, 174A, 174B, 174C, 174D, 174E, 174F, 179A and 179B above; and

179D.2 deny the allegations in the paragraph.

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

179E.1 refer to and repeat paragraphs 40A, 144.3, 174A, 174B, 174C, 174D, 174E, 174F, 179A, 179B and 179D above; and

179E.2 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 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, 144.3 and 182 above;
- 183.2 otherwise deny the allegations in the paragraph.
184. In answer to the allegations in paragraph 184 of the Claim, the Respondents:
- 184.1 refer to and repeat paragraphs 1.2, 94M.3 and 144.3 above;
- 184.1A say further that, in respect of some of the fees the Third Applicant paid as set out in paragraph 72.2A above, the Third Applicant has been remediated;

Particulars

- A. The Third Applicant was remediated \$2,893.54 on or around 30 November 2019 (AMF.3200.0008.0190).
- B. The Third Applicant was remediated \$549.10 on or around 26 March 2021 (AMF.3200.0008.0226).
- 184.2 otherwise deny the allegations in the paragraph.
185. The Respondents deny the allegations in paragraph 185 of the Claim and refer to and repeat 144.3 above.

R UNCONSCIONABLE CONDUCT

R.1 OSF 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;
- 190.1A admit that to the extent the First Applicant's AMP Authorised Representatives contracted with the First Applicant to provide ongoing services, including ongoing personal advice (as referred to in paragraph 72.1A above), those AMP Authorised Representatives were engaging in conduct in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act;
- 190.2 admit that to the extent Mr Spears of Bayside Financial Planners Pty Ltd 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 of Bayside Financial Planners Pty Ltd 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;

- 190.2A admit that to the extent the Third Applicant's AMP Authorised Representatives contracted with the Third Applicant to provide ongoing services, including ongoing personal advice, (as referred to in paragraph 72.2A above), those AMP Authorised Representatives were engaging in conduct in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act;
- 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.
- 196A. The Respondents refer to and repeat paragraphs 1.2, 94M.3, 144.3, 184.1A, 186 to 196 and otherwise deny the allegations in paragraph 196A of the Claim.

R.2 Legacy Products Conduct

- 196AA. The Respondents refer to and repeat paragraphs 103D to 103F and 187 to 196A above, and otherwise deny the allegations in paragraph 196AA of the Claim.
- 196B. In answer to the allegations in paragraph 196B of the Claim, the Respondents:
- 196B.1 refer to and repeat paragraph 103E above; and
- 196B.2 admit that, to the extent the conduct alleged in paragraph 103E.3 and 103E.4 of the Claim is admitted in paragraph 103E above, that conduct was in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act;
- 196B.3 otherwise deny the allegations in the paragraph.
- 196C. In answer to the allegations in paragraph 196C of the Claim, the Respondents:
- 196C.1 refer to and repeat paragraphs 103E and 196B above; and
- 196C.2 admit that, to the extent the conduct alleged in paragraphs 103E.3 and 103E.4 of the Claim is admitted in paragraph 103E above, that conduct was in trade or commerce within the meaning of s 12BA(1) of the ASIC Act;
- 196C.3 otherwise deny the allegations in the paragraph.
- 196D. The Respondents deny the allegations in paragraph 196D of the Claim and refer to and repeat paragraphs 196A to 196C above.
- 196E. In answer to the allegations in paragraph 196E of the Claim, the Respondents:

196E.1 refer to and repeat Section C and paragraphs 103D, 103E and 103F above;

196E.2 say that in the absence of proper particularisation of what is meant by “unsuitable”, the pleading in paragraph 196E.6 of the Claim is embarrassing and liable to be struck out;

Particulars

A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.

B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

196E.3 otherwise deny the allegations in the paragraph.

196F. The Respondents deny the allegations in the paragraph 196F of the Claim and refer to and repeat paragraphs 196AA to 196E above.

197. The Respondents deny the allegations in paragraph 197 of the Claim and refer to and repeat paragraphs 1.2, 144.3, 193, 196A to 196F above.

R.3 APL and Benchmarking Conduct

197A. The Respondents refer to and repeat paragraphs 187 to 197 and 95 to 103D above, and otherwise deny the allegations in paragraph 197A of the Claim.

197B. In answer to the allegations in paragraph 197B of the Claim, the Respondents:

197B.1 refer to and repeat paragraphs 95 to 103D above;

197B.2 say that the existence, nature and/or effect of the APLs was disclosed to the Applicants;

197B.3 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:

197B.3.1 the needs, objectives and circumstances of the person at a particular point in time including their age, sex, occupation, if any, smoking status, medical history and pastimes;

197B.3.2 what other financial products they held;

197B.3.3 what was disclosed to any person providing financial advice to the person;

197B.4 say that in the absence of proper particularisation of what is meant by “substantially equivalent” and “better”, the pleading in paragraph 197B.4 of the Claim is embarrassing and liable to be struck out;

Particulars

A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.

B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

197B.5 say that they are unable to plead to unparticularised allegations regarding unidentified Group Members;

197B.6 otherwise deny the allegations in the paragraph.

197C. In answer to the allegations in paragraph 197C of the Claim, the Respondents:

197C.1 refer to and repeat paragraph 197B above; and

197C.2 admit that, to the extent the conduct alleged in paragraph 197B of the Claim is admitted in paragraph 197B above, that conduct was in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act;

197C.3 otherwise deny the allegations in the paragraph.

197D. In answer to the allegations in paragraph 197D of the Claim, the Respondents:

197D.1 refer to and repeat paragraphs 197B and 197C above; and

197D.2 admit that, to the extent the conduct alleged in paragraphs 197B and 197C of the Claim is admitted in paragraphs 197B and 197C above, that conduct was in trade or commerce within the meaning of s 12BA(1) of the ASIC Act;

197D.3 otherwise deny the allegations in the paragraph.

197E. The Respondents deny the allegations in paragraph 197E of the Claim and refer to and repeat Section K above.

- 197F. The Respondents deny the allegations in paragraph 197F of the Claim and refer to and repeat paragraphs 197A to 197E above.
- 197G. The Respondents deny the allegations in paragraph 197G of the Claim and refer to and repeat paragraph 197B above.
- 197H. The Respondents deny the allegations in paragraph 197H of the Claim and refer to and repeat paragraphs 196A to 196G above.
- 197I. The Respondents deny the allegations in paragraph 197I of the Claim and refer to and repeat paragraphs 144.3 and 197H above.

R.5 Commissions and Supervision Unconscionable Conduct

- 197J. In answer to the allegations in paragraph 197J of the Claim, the Respondents refer to and repeat paragraphs 41 to 54A and 86 to 94O above, and otherwise deny the allegations in the paragraph.
- 197K. In answer to the allegations in paragraph 197K of the Claim, the Respondents:
- 197K.1 refer to and repeat paragraphs 94M.3 and 94N above;
- 197K.2 otherwise deny the allegations in the paragraph.
- 197L. In answer to the allegations in paragraph 197L of the Claim, the Respondents:
- 197L.1 admit that, to the extent the conduct alleged in paragraph 197K of the Claim is admitted, that conduct was conduct in connection with the supply or possibly supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act; and
- 197L.2 otherwise deny the allegations in the paragraph.
- 197M. The Respondents deny the allegations in paragraph 197M of the Claim and refer to and repeat Section K above.
- 197N. In answer to the allegations in paragraph 197N of the Claim, the Respondents:
- 197N.1 admit that, to the extent the conduct alleged in paragraph 197K of the Claim is admitted, that conduct was conduct in connection with the supply or possibly supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act; and
- 197N.2 otherwise deny the allegations in the paragraph.

- 197O. The Respondents admit the allegations in paragraph 197O of the Claim.
- 197P. The Respondents refer to and repeat paragraphs 194 and 197K and otherwise deny the allegations in paragraph 197P of the Claim.
- 197Q. In answer to the allegations in paragraph 197Q of the Claim, the Respondents:
- 197Q.1 refer to and repeat paragraphs 197K and 197P above; and
- 197Q.2 otherwise deny the allegations in the paragraph.
- 197R. In answer to the allegations in paragraph 197R of the Claim, the Respondents:
- 197R.1 refer to and repeat paragraphs 1.2, 94M.3, 144.3 and 184.1A above;
- 197R.2 otherwise deny the allegations in the paragraph.
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, 144.3 and 193 and otherwise deny the allegations in paragraph 199 of the Claim.

S UNCONSCIONABLE CONDUCT – INVOLVEMENT – AMP

S.1 AMP's Involvement in the Legacy Products Conduct

- 199A. In answer to the allegations in paragraph 199A of the Claim, the Respondents:
- 199A.1 refer to the further particulars provided by the Applicants in Piper Alderman's letter of 25 January 2024;
- 199A.2 say that the pleading in relation to the AMP Licensees' knowledge in paragraphs 103E.1 and 103E.2 is deficient because it does not give adequate particulars as to the facts and circumstances from which the AMP Licensees ought to have acquired the alleged knowledge;
- 199A.3 on the basis of the above, say the paragraph is vague and defective and liable to be struck out;
- 199A.4 otherwise deny the allegations in the paragraph.
- 199B. In answer to the allegations in paragraph 199B of the Claim, the Respondents:
- 199B.1 refer to and repeat paragraphs 103D and 103E above;

- 199B.2 say that in the absence of proper particularisation of the “decision” or “recommendation”, the pleading in paragraph 199B of the Claim is embarrassing and liable to be struck out;

Particulars

- A. Letter from King & Wood Mallesons to Piper Alderman and Shine Lawyers dated 19 December 2023.
- B. Letter from Piper Alderman to King & Wood Mallesons dated 25 January 2024.

- 199B.3 otherwise deny the allegations in the paragraph.

S.2 Commissions Unconscionable Conduct

- 199C. In answer to the allegations in paragraph 199C of the Claim, the Respondents:

- 199C.1 refer to and repeat paragraphs 41 to 54A, 86 to 94D and 197K to 197Q above;

- 199C.2 say that the pleading in relation to the AMP Licensees’ knowledge in paragraph 199C is deficient because it does not give adequate particulars as to the facts and circumstances from which the AMP Licensees ought to have acquired the alleged knowledge;

- 199C.3 on the basis of the above, say the paragraph is vague and defective and liable to be struck out;

- 199C.4 otherwise deny the allegations in the paragraph.

- 199D. The Respondents deny the allegations in paragraph 199D of the Claim and refer to and repeat paragraphs 41 to 54A and 86 to 94D.

S.3 Involvement

- 199E. The Respondents deny the allegations in paragraph 199E of the Claim and:

- 199E.1 refer to and repeat paragraphs 199A and 199D above, and sections R.2 and R.5 above;

- 199E.2 say that the Applicant’s case is limited to claims of knowing involvement within the meaning of s 79(c) of the Corporations Act.

Particulars

A. Letter from King & Wood Mallesons dated 19 December 2023.

B. Letter from Piper Alderman dated 15 January 2024.

199F. The Respondents deny the allegations in paragraph 199F of the Claim and refer to and repeat paragraphs 196, 196A, 196F, 197, 197H, 197I, 197Q, 197R, 198 and 199E.

200. [not used]

201. [not used]

202. [not used]

203. [not used]

204. [not used]

205. [not used]

206. [not used]

207. [not used]

208. [not used]

209. [not used]

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

Date: 15 March 2024

A handwritten signature in blue ink, appearing to read 'A. Engels', positioned above a horizontal dotted line.

Signed by Amanda Jane Engels

Lawyer for the Respondents

This pleading was prepared by King & Wood Mallesons and settled by Wendy Harris KC, Sera Mirzabegian SC and Jesse Rudd of Counsel.

Certificate of lawyer

I, Amanda Jane Engels, certify to the Court that, in relation to the defence to the Further Amended Statement of Claim filed on behalf of the Respondent, 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: 15 March 2024



.....
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

Janelle Lodge

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

Resolution Life Australasia Limited (ACN 079 300 379)

Fifth Respondent