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File Title: EQUITY FINANCIAL PLANNERS PTY LTD v AMP FINANCIAL
PLANNING PTY LTD
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.

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**THIRD SECOND FURTHER AMENDED DEFENCE TO THE THIRD SECOND
FURTHER AMENDED STATEMENT OF CLAIM**

No. VID 498 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

EQUITY FINANCIAL PLANNERS PTY LTD

Applicant

AND

AMP FINANCIAL PLANNING PTY LTD

Respondent

NOTE: Unless otherwise stated, a defined term used in this Third Second-Further Amended Defence to the Third Second-Further Amended Statement of Claim has the same meaning as assigned to it in the Third Second Further Amended Statement of Claim.

In answer to the Third Second Further Amended Statement of Claim (**Claim**), the Respondent (**AMPFP**) says as follows:

1. It admits paragraph 1.
2. It does not plead to paragraph 2, as that paragraph makes no allegation against it.
3. It admits paragraph 3.
4. It admits paragraph 4.

Authorised Representative Agreements

5. It admits paragraph 5.

Filed on behalf of the Respondent
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6. It admits paragraph 6.
7. It admits paragraph 7.
8. It admits paragraph 8.
9. It admits paragraph 9.
10. As to paragraph 10, it:
 - (a) says the terms of the agreement between AMPFP and each Practice are contained in:
 - (i) the relevant Authorised Representative Agreement;
 - (ii) the currently applicable Master Terms (and as amended from time to time);
 - (iii) the currently applicable Practice Documents (and as amended from time to time); and
 - (iv) the currently applicable Professional Standards (and as amended from time to time);
 - (b) says the Master Terms, Practice Documents and Professional Standards form part of the Authorised Representative Agreement;

Particulars

AMPFP refers to the particulars to paragraph 9 of the Claim and the definition of Master Terms in each Authorised Representative Agreement, which includes Practice Documents and Professional Standards.

- (c) says where there is any inconsistency between the Practice Documents or the Professional Standards and the Master Terms, the Master Terms take priority; and

Particulars

Clause 19.5, Master Terms (v 1.3); clause 19.5, Master Terms (v 1.2); clause 19.5, Master Terms (v 1).

- (d) otherwise denies the allegations in the paragraph.
11. It admits paragraph 11, but says that there was no BOLR Policy with an effective date of 1 July 2010 (as particularised in the Claim).

12. As to paragraph 12:

- (a) save that it says the paragraph paraphrases the terms of the Authorised Representative Agreement and it refers to and relies upon the terms for their full force and effect, it admits the paragraph; and
- (b) it says further, as to sub-paragraph 12(f) of the Claim, that a Practice was only eligible to access the buyer of last resort payment if, despite reasonable endeavours, it had been unable to complete a practice-to-practice transfer.

Particulars

BOLR Policy (effective 1 June 2017), page 6.

13. As to paragraph 13:

- (a) it admits sub-paragraphs 13(a), 13(b) and 13(c)(i) – (iii);
- (b) save that it says clause 1.4(d) of the Master Terms did not require that AMPFP’s consideration be in good faith, it admits sub-paragraph 13(c)(iv); and
- (c) it refers to and relies upon the terms of the Master Terms for their full force and effect.

14. As to paragraph 14:

- (a) it admits sub-paragraph 14(a);
- (b) it admits sub-paragraph 14(b);
- (c) as to sub-paragraph 14(c), it:
 - (ia) denies that the term the subject of sub-paragraph 14(c) contained the proviso “provided AMPFP first consulted with ampfpa”, says that the relevant wording of the term was “following consultation with the ampfpa”, and says that upon a proper construction of the term:
 - (A) it was not a condition of the enlivening or exercising of the power to amend without 13 months’ notice that there had been “consultation with the ampfpa”; and

- (B) the contractual effectiveness of any changes to the BOLR Policy pursuant to that term did not depend upon the obligation to consult with the ampfpa having been satisfied;
- (i) says the term pleaded in the sub-paragraph did not require that changes be reasonably necessary as alleged nor that AMPFP's consultation be in good faith;
- (ii) otherwise admits the sub-paragraph; and
- (iii) says further for the avoidance of doubt that this term qualified the term pleaded in paragraph 14(a) of the Claim; and
- (d) it refers to and relies upon the terms of the BOLR Policy for their full force and effect.

14A. It denies the allegations in paragraph 14A and refers to and relies upon the terms of the BOLR Policy for their full force and effect.

Primary contractual claim

15. As to paragraph 15, it:
- (a) refers to and repeats paragraphs 13 and 14 above;
- (b) denies that the word "required" in sub-paragraph 15(b) of the Claim is any part of the proper construction the subject of the paragraph;
- (c) says that consultation regarding changes pursuant to the LEP Exception (as referred to in sub-paragraph 15(b) of the Claim), is consultation within the meaning of clause 1.4 of the Master Terms; and
- (d) otherwise admits the paragraph.
16. It denies the allegations in paragraph 16 and says that:
- (a) clause 1.4(c) of the Master Terms required it to explain why it considered changes were required; ~~and~~
- (aa) the pleaded term does not arise on the proper construction of any of the express terms of the BOLR Policy and/or the Master Terms; and

- (b) the pleaded term is not necessary to give the agreement business efficacy.
17. As to paragraph 17:
- (a) it says that a new BOLR Policy took effect on 8 August 2019;
 - (b) on the basis that the paragraph refers to the BOLR Policy in effect prior to the 8 August 2019 changes, and save that it says the BOLR Policy used the language “exercise” rather than “invoke” in relation to the buyer of last resort facility, it admits sub-paragraphs 17(a), 17(b), 17(e) and 17(f);
 - (c) it says that the BOLR Policy provided that the minimum notice period (that is, the period from the application by the Practice to the exercise date) is typically 12 months, unless a Practice is willing to accept a register discount or has more than 15 years’ tenure, in which case the minimum notice period is 6 months;
 - (d) it says that, in addition to satisfaction of the Eligibility Criteria, a Practice would only be eligible to receive a buyer of last resort payment if it had also:
 - (i) followed the steps in the BOLR Process document (per BOLR Policy, page 6 and 10), including acceptance of the BOLR valuation (per BOLR Process, page 13);
 - (ii) entered into a BOLR Licensee Buy-Back Agreement (per BOLR Policy, page 9);
 - (iii) satisfied all Obligations (per BOLR Policy, pages 9 – 10); and
 - (iv) met the client file and advice standards required (per BOLR Policy, pages 11 – 15);
 - (e) it says that any buyer of last resort payment would be subject to deductions and adjustments in accordance with the BOLR Policy;
 - (f) save that it says it would offer to enter into a BOLR Licensee Buy-Back Agreement (as that term is used in the BOLR Policy) *before, on or after* the exercise date, depending on what steps required by the BOLR

Process document and the BOLR Policy had been completed as at the exercise date, it admits sub-paragraph 17(g);

- (g) it says that the BOLR Policy provided that “[w]hen exercising the Buyer of Last resort facility, all parties will act in good faith”;
 - (h) it refers to and relies upon the BOLR Policy for its full terms and effect; and
 - (i) it otherwise denies the allegations in the paragraph.
18. It admits paragraph 18.
19. It admits paragraph 19.
20. As to paragraph 20, it:
- (a) says that on 8 August 2019 it amended the BOLR Policy, as it was entitled to do pursuant to clause 3.2(b) of the Master Terms (as qualified where applicable by clause 3.2(c) of the Master Terms and the LEP Exception in the BOLR Policy), by:
 - (i) reducing the BOLR Multiple from 4x to 1.42x for Ggrandfathered commission revenue;
 - (ii) providing a glide path for the reduction of the BOLR Multiple in respect of Ggrandfathered commission revenue to zero by 1 January 2021 (together with the change listed at sub-paragraph 20(a)(i) above, the **Grandfathered Commission Changes**);
 - (iii) reducing the BOLR Multiple from 4x to 2.5x for all ongoing revenue other than Ggrandfathered commission revenue (**BOLR Multiple Change**);
 - (iv) making a range of other changes, including to the minimum notice period, the percentage of a BOLR payment that must be deferred and to the notice periods applicable to changes to the BOLR Policy (**13 Month Notice Changes**);

Particulars

The 13 Month Notice Changes are set out in Appendix 5 to the BOLR Policy effective 8 August 2019.

- (b) says the Grandfathered Commission Changes and the BOLR Multiple Change (together the **8 August 2019 Changes**) were effective 8 August 2019, and the 13 Month Notice Changes were effective 8 September 2020; and
 - (c) otherwise denies the allegations in the paragraph.
21. On the basis that the 8 August 2019 Changes are the three changes listed at sub-paragraphs 20(a) – (c), it admits paragraph 21.
22. As to paragraph 22, it:
- (a) admits that Mr Paff sent an email to Messrs Macdonald and Jordan (of ampfp) on 8 February 2019 and says further that:
 - (i) the memorandum attached to that email proposed changes to the BOLR Policy to reduce the BOLR Multiple in respect of Ggrandfathered commission revenue to 2.3x and introduce a glide path to zero by 1 January 2021;
 - (ii) the memorandum advised that AMPFP intended to announce the changes on 15 February 2019, and sought feedback by 13 February 2019; and
 - (iii) the email followed a meeting between Mr Paff and ampfp representatives on 1 February 2019;
 - (b) admits sub-paragraph 22(b), and says further that:
 - (i) on 15 February 2019 Mr Paff wrote to Mr Macdonald, responding to Johnson Winter & Slattery's (**JWS**) letter of 14 February 2019, extending the time for feedback from ampfp to 18 February 2019 and advising that AMPFP would delay making any announcement of the proposed changes; and
 - (ii) on 18 February 2019 JWS wrote to King & Wood Mallesons (solicitors for AMPFP), responding to Mr Paff's letter of 15 February 2019;
 - (c) admits sub-paragraph 22(c), and says further that:

- (i) the meeting took place on 18 February 2019;
 - (ii) on 20 February 2019 Mr Jordan (on behalf of RemCo, a committee of the amfpfa board) wrote to Mr Paff providing feedback on the proposed changes;
 - (iii) on 20 March 2019 a meeting was held between representatives of AMPFP and amfpfa;
 - (iv) between March and July 2019 there were informal discussions between Mr Paff or Mr Akers (of AMPFP) and Mr Jordan, which included discussions regarding changes to BOLR valuations;
 - (v) on 18 June 2019 Mr Macdonald wrote to Mr Akers regarding consultation;
 - (vi) on 20 June 2019 Mr Akers replied to Mr Macdonald regarding consultation; and
 - (vii) on 22 July 2019 Mr Akers wrote to Mr Jordan, advising that nondisclosure agreements would be necessary for upcoming discussions;
- (d) admits a meeting took place between AMPFP and amfpfa representatives on 25 July 2019 at AMP's Sydney office, and says the nondisclosure agreement was provided by Mr George of AMPFP to members of amfpfa's RemCo on 23 July 2019, updated and reissued on 24 July 2019 following concerns raised by Mr Macdonald and reissued at the meeting on 25 July 2019 following further comments from amfpfa;
- (e) admits sub-paragraph 22(e), and says further that written materials detailing the matters presented at the meeting, but adjusted for comments made by amfpfa representatives at the meeting, were provided the following day, by email from Mr Akers to Messrs Jordan and Macdonald;
- (f) admits sub-paragraph 22(f), save that it says the email attaching the Akers Memorandum was sent at 5:19pm;

- (g) admits sub-paragraph 22(g), and says further the Akers Memorandum also:
 - (i) set out the proposed timetable for when changes would come into effect, for both the 8 August 2019 Changes and the 13 Month Notice Changes;
 - (ii) explained why AMPFP considered the changes were required, including why economic changes in the valuation of advice businesses meant it was no longer appropriate for AMPFP to acquire client registers under the BOLR Policy valued on the basis of a 4x multiple;
 - (iii) set out the implications for Practices as a whole; and
 - (iv) invited feedback, having regard to AMPFP's timetable for announcing the proposed changes;
- (h) admits sub-paragraph 22(h);
- (i) admits sub-paragraph 22(i), and says further that, among other matters, Mr Akers' email also:
 - (i) explained that the time given for feedback from amfpfa was necessarily limited due to the market-sensitive nature of the information;
 - (ii) noted that the meeting that had been scheduled for 31 July 2019 for AMPFP to receive feedback from amfpfa had been cancelled by amfpfa; and
 - (iii) offered available times to meet to consult prior to 6 August 2019;
- (j) says that:
 - (i) a meeting was scheduled to take place on 2 August 2019 between AMPFP and amfpfa representatives, but the meeting was cancelled by amfpfa;
 - (ii) AMPFP offered to reschedule the meeting, and continued to be available to discuss the proposed changes with amfpfa right up

until the changes were announced on 8 August 2019, but ampfpfa did not take up the offer of further discussions;

Particulars

Email from Mr Akers to Mr Jordan on 1 August 2019.

Letter from Mr Akers to Messrs Jordan and Macdonald on 6 August 2019.

- (iii) AMPFP made alterations and adjustments to the proposed changes as a result of the feedback provided by ampfpfa at the meeting on 25 July 2019; and

Particulars

From the range of 2.0 to 2.5 that was being considered, the multiple of 2.5x was selected.

Proposed changes to Practice remuneration for Practices in the BOLR pipeline were dropped.

Practices with original exercise dates pre-8 August 2019, which failed to settle until post-8 August 2019, were carved out from the changes (some 63 Practices).

- (k) otherwise denies the allegations in the paragraph.
23. It denies the allegations in paragraph 23, and says further that clause 1.4 of the Master Terms required it to:
- (a) give ampfpfa reasonable prior notice about the proposed changes having regard to the urgency with which the changes must be made (clause 1.4(a)); and
- (b) consider responses from ampfpfa provided that such responses were provided to it promptly having regard to its timetable for when those changes would come into effect (clause 1.4(d)).
24. It denies the allegations in paragraph 24, and refers to and repeats paragraph 23 above.
25. As to paragraph 25:
- (a) as to sub-paragraph (a), it:
- (i) refers to and repeats sub-paragraphs 13(b) and 14(c);

- (ii) says that the deadline for feedback was imposed by reference to the timetable for the announcement and effective date of the changes, as required by clause 1.4(d) of the Master Terms;
 - (iii) says that the announcement of the 8 August 2019 Changes was market sensitive and therefore required prompt disclosure to the market once sufficiently certain;
 - (iv) says that its Board resolved to make the 8 August 2019 Changes to the BOLR Policy at a meeting on the evening of 7 August 2019;
 - (v) admits that its timetable for the 8 August 2019 Changes coming into effect had regard to the matters alleged in sub-paragraph 25(a)(i) of the Claim;
 - (vi) says that, in light of the economic changes which made the then current BOLR Multiple inappropriate, it had a legitimate commercial purpose in setting a timetable for the 8 August 2019 Changes to take effect that coincided with other changes to its business, and the announcement of half-yearly results; and
 - (vii) otherwise denies the allegations in the sub-paragraph;
- (b) as to sub-paragraphs (b) and (c), it:
- (i) says that the deadline for feedback was not required to be based upon an estimate of the time required to obtain advice;
 - (ii) refers to and repeats paragraph 23 above; and
 - (iii) otherwise denies the allegations in the sub-paragraphs.

26. As to paragraph 26, it:

- (a) admits that its management intended to proceed with changes to the BOLR Multiple, subject to a decision of its Board to proceed;
- (b) denies that its management intended to proceed with particular changes to the BOLR Multiple irrespective of any feedback provided by ampfpfa;
- (c) says further that:

- (i) clauses 1.4(d) and 3.2(c) of the Master Terms required it to consider, but did not require it to accept or agree with, responses, options or alternatives offered by amfpfa;
- (ii) it did consider the feedback provided by amfpfa;
- (iii) it did make amendments to its proposed changes as a result of consultation with amfpfa;

Particulars

AMPFP refers to and repeats sub-paragraph 22(j)(iii) above and the particulars thereto.

- (iv) if amfpfa had provided further feedback, as AMPFP invited it to do, AMPFP would have considered that feedback; and
 - (v) the economic changes that made the BOLR Multiple inappropriate meant that, if amfpfa had failed to provide any feedback, AMPFP needed to proceed with making changes to the BOLR Multiple irrespective of the lack of feedback; and
- (d) otherwise denies the allegations in the paragraph.
27. It denies the allegations in paragraph 27, and:
- (a) refers to and repeats paragraphs 22 to 26 above;
 - (b) refers to and repeats paragraph 14A and sub-paragraphs 13(b), 14(c)(i) and 17(g) above and says that the Authorised Representative Agreement did not impose an obligation to consult in good faith and/or reasonably; and
 - (c) in any event, denies that it did not consult with amfpfa in good faith and reasonably.
28. It refers to and repeats paragraph 27 above, further or alternatively refers to and repeats paragraph 14(c)(ia) above, and denies the allegations in paragraph 28.
- 28A. Further, and in the alternative to paragraph 28 above, if (which is denied) its exercise of its rights to amend the BOLR Policy as set out in paragraph 20 above was not effective to make all of the 8 August 2019 Changes with effect from

8 August 2019 as alleged above, it was nevertheless effective to amend the BOLR Policy:

(a) as to the Grandfathered Commission Changes with effect from 8 August 2019 because:

(i) consultation in respect of the Grandfathered Commission Changes had commenced 6 months before the change; and/or

Particulars

AMPFP refers to paragraph 22 above.

(ii) the Grandfathered Commission Changes were also necessitated by legislative change; and/or

Particulars

On 22 February 2019 the Commonwealth Treasury released an exposure draft of proposed legislation: *A Bill for an Act to amend the Corporations Act 2001 in relation to grandfathered conflicted remuneration, and for related purposes.*

On 1 August 2019 the Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill (**Commissions Bill**) was introduced into the House of Representatives and read a first time. It received Royal Assent on 28 October 2019.

(iii) in light of the anticipated passage of the Commissions Bill, AMPFP was already entitled under the terms of the BOLR Policy to discount Ggrandfathered commission revenue, and the Grandfathered Commission Changes were merely formalising the position; and

Particulars

The BOLR Policy gave AMPFP the right to apply a discretionary discount, if in AMPFP's reasonable opinion it was prudent to do so (BOLR Policy, page 5).

Further, fee revenue that was considered by AMPFP to be temporary was specifically excluded from calculation of ongoing revenue and register value (BOLR Policy, pages 8-9).

- (b) as to all other amendments (including the BOLR Multiple Change) with effect from 8 September 2020.

Particulars

AMPFP refers to the term of the BOLR Policy pleaded at paragraph 15(b) of the Claim and says that, if the 8 August 2019 Changes were not effective immediately, those changes constituted 13 months' notice.

29. As to paragraph 29, it says that the 8 August 2019 Changes were effective and that it has given and will continue to give effect to them in its dealings with Practices, and otherwise denies the allegations in the paragraph.
30. It admits paragraph 30, and:
- (a) says 13 months' notice was not required; and
- (b) says, in the alternative, if 13 months' notice was required (which is denied), it was given on 8 August 2019, and the changes took effect as pleaded in paragraph 28A above.
31. It denies the allegations in paragraph 31 and:
- (a) refers to and repeats paragraph 16 above and denies it was required to identify the economic change to Practices; and
- (b) says, notwithstanding sub-paragraph 31(a) above, that it did identify to Practices the economic change that made the BOLR Multiple inappropriate.

Particulars

The memorandum attached to Mr Paff's email to ampfp on 8 February 2019 (referred to at sub-paragraph 22(a) above) set out why industry expectations of change following the Financial Services Royal Commission had impacted on the value of Ggrandfathered commission revenue, constituting an economic change within the meaning of the BOLR Policy.

The Akers Memorandum provided to ampfp on 26 July 2019 set out why the quantifiable and sustained decrease in the value of register rights it had observed was an economic change rendering the BOLR Multiple inappropriate.

AMPFP's communication to Practices on 8 August 2019 identified the quantifiable and sustained decrease in the market value of register

rights as an economic change rendering the BOLR Multiple inappropriate.

32. As to paragraph 32, it:

- (a) admits the economic change on which it relied, and which it communicated to Practices, was the sustained and quantifiable decrease in the market value of register rights linked to ongoing revenue;
- (b) says:
 - (i) the purpose of the BOLR Policy was (and is) to provide a “last resort” where a practice is closing down and that practice has been unable to find another practice to take over all or part of its client register;
 - (ii) the sustained and quantifiable decrease in the market value of client registers, relative to the BOLR benefit payment under the BOLR Policy, meant the BOLR Policy was no longer operating, or soon would not operate, in accordance with its purpose, because:
 - A. Practices were incentivised to use the buyer of last resort facility rather than practice-to-practice transfers, making the BOLR Policy a “first resort” rather than a “last resort”, as intended;
 - B. AMPFP was required to acquire client register rights at a greater value than the price for which it could on-sell those register rights, which was not economically sustainable; and
 - C. combined with industry speculation regarding the future of Ggrandfathered commission revenue, there was a real risk of a “BOLR run” occurring, that is, a large number of Practices seeking to exercise the buyer of last resort facility at the same time, which would have serious adverse consequences for AMPFP, both financially and in terms of client servicing capacity; and

- (iii) the sustained and quantifiable decrease in the market value of client register rights was an economic change which rendered the BOLR Multiple inappropriate; and
- (iv) further or alternatively, there had been a material change in the supply of and demand for financial advice services and practices, and such change was an economic change which rendered the BOLR Multiple inappropriate;
- (c) refers to and repeats sub-paragraph 14(c)(i) above;
- (d) says that, even if the changes were required to be reasonably necessary to render the BOLR Policy appropriate, the changes were reasonably necessary; and

Particulars

AMPFP repeats the matters in sub-paragraph 32(b) above.

Further particulars may be provided upon service of expert evidence.

- (e) otherwise denies the allegations in the paragraph.
33. It denies the allegations in paragraph 33 and, further, refers to and repeats paragraph 28A above.
34. As to paragraph 34, it refers to and repeats paragraph 29 above, and otherwise denies the allegations in the paragraph.

In exercising the power in the BOLR Amendment Term, AMPFP did not fail to act in good faith and reasonably such as to contravene that Term

34A. As to paragraph 34A, it:

- (a) admits that the purpose, and effect, of the LEP Exception was to give AMPFP the right to make any change to the BOLR Policy without 13 months', or any, notice should legislative, economic or product changes render any part of the BOLR Policy inappropriate;
- (b) admits that changes made to the BOLR Policy pursuant to the LEP Exception had to be responsive to the inappropriateness; and

- (c) otherwise denies the allegations in paragraph 34A and refers to and repeats sub-paragraph 14(c) above.

34B. As to paragraph 34B, it:

- (a) admits that it made the 8 August 2019 Changes without 13 months' notice in reliance on the LEP Exception, and says that it was entitled to do so and that the changes were effective on and from 8 August 2019;
- (b) says that:
- (i) it made the 8 August 2019 Changes to address the matters in sub-paragraph 32(b)(ii) above;
- (ii) in consequence of making the 8 August 2019 Changes, it reduced:
- A. what would otherwise have been its capital exposure and liabilities in connection with the BOLR Policy;
- B. what would otherwise have been the amount it would be required to pay to Practices pursuant to the BOLR Policy with exercise dates after 8 August 2019; and
- C. what would otherwise have been the incentive for Practices to submit a BOLR notice in preference to a practice-to-practice transaction, or at all; and
- (iii) the matters in sub-paragraphs 34B(b)(ii)(A)-(C) immediately above were consequences of the inappropriateness of the BOLR Multiple as it stood before the 8 August 2019 Changes took effect;
- (c) says that making the 8 August Changes was aligned with its strategic direction at the time and formed part of its strategic plan, which included:
- (i) reshaping the AMP Advice business to transition to a higher quality, leaner network of Practices;
- (ii) retaining Practices of scale and quality to ensure a viable future network; and

- (iii) a future redesign of the licensee offer, which was anticipated to include an assessment of when and how to remove institutional ownership;
- (d) says that the matters in sub-paragraphs 34B(b)(i), (b)(ii) and (c) were legitimate commercial aims and objectives;
- (e) says that:
 - (i) the terms of the BOLR Policy did not require that the BOLR Multiple be or remain at a level at which the amount payable by AMPFP under the BOLR Policy involved a premium to the external market value of register rights;
 - (ii) AMPFP did not make the 8 August 2019 Changes for the purpose of removing, or reducing, the premium to the external market value of register rights that was payable by AMPFP under the BOLR Policy;
 - (iii) by the 8 August 2019 Changes, the premium to the external market value was not removed, but reduced; and
 - (iv) at the time of making the 8 August 2019 Changes, it was not AMPFP's objective to increase the direct servicing of clients by it, and the 8 August 2019 Changes were not made in furtherance of doing so; and
- (f) otherwise denies the allegations in paragraph 34B.

34C. As to paragraph 34C:

- (a) it says that the paragraph is embarrassing and liable to be struck out, in circumstances where paragraph 34A of the Claim alleges the purpose of a provision of the BOLR Policy and paragraph 34B of the Claim alleges purposes of AMPFP in making the 8 August 2019 Changes; and
- (b) under cover of that objection, it refers to and repeats paragraphs 34A and 34B above and denies the paragraph.

34D. As to paragraph 34D:

- (a) it denies sub-paragraph (a) and accordingly denies sub-paragraph (b); and
- (b) further or alternatively, it refers to and repeats paragraph 14A above and accordingly denies sub-paragraph (b).

34E. As to paragraph 34E, it denies the paragraph and refers to and repeats paragraph 46 below.

35. It admits paragraph 35.

36. It denies the allegations in paragraph 36 and says:

- (a) it did offer to enter into a Buy-Back Agreement, in accordance with the terms of the BOLR Policy; and
- (b) even if it did breach the Authorised Representative Agreement as alleged in sub-paragraph 36(a) (which is denied), most each group members referred to in paragraph 35 haves released any claim in respect of such breach and such claim is not now maintainable and/or is barred.

Particulars

Most Each Buy-Back Agreements contains a term to the effect that “*On payment by AMPFP of the BOLR Benefit to the Practice, each of the Relevant Parties hereby releases AMPFP from all and any present or future claims, proceedings, suits and Liabilities arising out of or in connection with the facts or circumstances giving rise to the BOLR Benefit*”, although the exact drafting of the releases varies.

The document IDs of the Buy-Back Agreements containing a release that have been identified at the date of this ~~Third-Second~~ Further Amended Defence are set out in Schedule 1.

37. As to paragraph 37:

- (a) it admits sub-paragraphs 37(a), (b), (ba), and (c) ~~—(d); and~~
- (b) it does not know and therefore does not admit sub-paragraphs 37(e) with respect to group members, but with respect to the applicant denies sub-paragraph 37(e); and 37(f).
- (c) it denies sub-paragraphs (bb), (ca) and (d) and refers to and repeats paragraph 36(a) above and says further that the timing of the provision

of a valuation depends on the completion of other steps required by the BOLR Process document (per the BOLR Policy).

38. As to paragraph 38, it:

- (a) denies the allegations in paragraph 38, refers to and repeats sub-paragraph 36(a) above and says further that a group member referred to in paragraph 37 of the Claim would only have been contractually entitled to received a BOLR benefit payment if it had satisfied all of the matters set out in sub-paragraph 17(d) above and such payment would have been subject to the matters set out in sub-paragraph 17(e) above; and
- (b) says further that:
 - (i) the applicant did not accept the valuation provided to it; and
 - (ii) if the applicant has suffered loss (which is denied), it failed to mitigate that loss.

Particulars

The applicant failed to accept the register valuations provided to it on 19 November 2019 or 11 August 2020, and therefore no Buy-Back Agreement could be offered to it.

The applicant failed to accept the register valuation provided to it on 11 August 2020 in circumstances where:

- (a) the valuation exceeded the current value of its register;
- (b) accepting that valuation would have put the applicant in the same or better financial position as it would have been if it had entered a Buy-Back Agreement at a multiple of 4x, in circumstances where forbearance arrangements had been offered in respect of the applicant's practice finance.

The applicant failed to accept or respond to an offer made to it on 10 May 2021 [REDACTED]

[REDACTED]

The manner in which the applicant has operated its Practice since submitting its BOLR notice has caused a decline in revenue, which has diminished the current value of its register rights, in that:

- (a) since May 2019 it has signed up fewer than 100 new revenue generating clients, and fewer than 10 of those were signed up in the past 12 months;
- (b) since May 2019 it has had over 600 clients cease paying any revenue, and over 200 of those ceased in the past 18 months; and
- (c) it failed to meet AMPFP's deadline for the transition of ongoing fee arrangements to annual advice service agreements, with the result that fees have been switched off.

First alternative contractual claim

- 39. It refers to and repeats paragraphs 14, 14A and 15 above and otherwise denies the allegations in paragraph 39.
- 40. On the basis that the 8 August 2019 Changes are the three changes listed at sub-paragraphs 20(a) – (c), it admits paragraph 40.
- 41. It denies the allegations in paragraph 41 and refers to and repeats paragraphs 22 to 26 above.
- 42. It denies the allegations in paragraph 42 and refers to and repeats paragraph 28A above.
- 43. As to paragraph 43, it refers to and repeats paragraph 29 above and otherwise denies the allegations in the paragraph.
- 44. As to paragraph 44, it refers to and repeats paragraphs 35 to 38 above.
- 45. It denies the allegations in paragraph 45 and refers to and repeats paragraphs 14, 15 and 30 to 32 above.
- 46. It denies the allegations in paragraph 46, and says that:
 - (a) a Buy-Back Agreement is available, in accordance with the terms of the BOLR Policy, to the Applicant and to eligible group members listed in Part II of the Particulars to paragraph 46;

- (b) the Applicant and the group members referred to in paragraph 46 of the Claim would only have been contractually entitled to received a BOLR benefit payment if they had each satisfied all of the matters set out in sub-paragraph 17(d) above and such payment would have been subject to the matters set out in sub-paragraph 17(e) above;
- (c) it refers to and repeats paragraph 28A above, and says further that any group member listed in Part III of the Particulars to paragraph 46 of the Claim who had not lodged an application to exercise the buyer of last resort facility by 8 September 2019 has suffered no loss;
- (d) even if it did breach the BOLR Amendment Term as alleged in paragraph 45 (which is denied), any group members referred to in paragraph 46 that have:
- (i) entered into a Buy-Back Agreement containing a release; or
 - (ii) ceased to be authorised representatives of AMPFP and have transferred client servicing rights to a new licensee and entered into a deed of release with AMPFP (**Institutional Release**) containing a release; or
 - (iii) otherwise entered into a settlement deed with AMPFP containing a release (**Settlement Deed**),

have released any claim in respect of such breach and such claim is not now maintainable and/or is barred; and

Particulars

AMPFP refers to the particulars to sub-paragraph 36(b) above.

Most of ~~the~~ Institutional Releases contain terms to the effect pleaded at sub-paragraph 46(e)(iv) below. The document IDs of the Institutional Releases containing a release that have been identified at the date of this ~~Third-Second~~ Further Amended Defence are set out in Schedule 2.

Most of ~~the~~ Settlement Deeds contain terms to the effect pleaded at sub-paragraph 46(e)(v) below. The document IDs of the Settlement

Deeds containing a release that have been identified at the date of this ~~Third-Second~~ Further Amended Defence are set out in Schedule 2.

- (e) further or in the alternative to sub-paragraph 46(d) above, even if it did breach the BOLR Amendment Term as alleged in paragraph 45 (which is denied), in respect of those group members referred to in paragraph 46 that have entered into a Buy-Back Agreement, an Institutional Release or a Settlement Deed which contains terms to the effect of those pleaded in sub-paragraphs (i)-(v) below there has been an accord and satisfaction by reason of the following matters:
- (i) some of the Buy-Back Agreements contained a term to the effect that on payment by AMPFP of the BOLR Benefit (as defined in the agreement) to the Practice (as defined in the agreement), the group member released AMPFP from all and any present or future claims, proceedings, suits, and liabilities arising out of or in connection with the facts or circumstances giving rise to the BOLR Benefit;
 - (ii) some of the Buy-Back Agreements contained a term to the effect that on and from the Completion Date (as defined in the agreement) the group member released AMPFP from all and any present or future claims, proceedings, suits and liabilities arising out of or in connection with the Dispute (as defined in the agreement), the BOLR Policy (or superseded versions and associated communications) and: (1) either the facts or circumstances giving rise to the Termination Notice or the Buy-Back Benefit (each as defined in the agreement); or (2) the Valuation Terms or the BOLR Benefit (each as defined in the agreement);
 - (iii) some of the Buy-Back Agreements contained a term to the effect that, on payment of the amount specified in the agreement, the group member released AMPFP from all and any claims, proceedings, suits, liabilities, demands, actions, damages, losses costs and expenses arising out of or in connection with the facts

or circumstances giving rise to the payment under the agreement or in relation to the AR Agreement including under the Master Terms and BOLR Policy (each as defined in the agreement);

- (iv) ~~most each~~ of the Institutional Releases contained a term to the effect that upon issue of the Client Release Letter (as defined in the agreement), the group member released AMPFP from any obligation or claim for or in relation to the buyback or, or payment of monies or other consideration for, registry rights, or client servicing rights including under the BOLR Policy, and any other matter arising from or in connection with the group member's appointment and service as an Authorised Representative of AMPFP, their AR Agreements (as defined in the agreement) and the termination of those agreements;
- (v) ~~most each~~ of the Settlement Deeds contained a term to the effect that upon payment of a settlement sum, the group member released AMPFP from claims (as defined in the relevant deed, but variously arising out of or in connection with particular proceedings, the BOLR Policy or the 2019 BOLR Amendments (each as defined in the agreement));
- (vi) in respect of each of the ~~agreements~~ Buy-Back Agreements containing terms to the effect of those pleaded in sub-paragraphs (i), (ii) or (iii) above, either the Completion Date has occurred or AMPFP has made the payment giving rise to the operation of those releases;
- (vii) in respect of each of the Institutional Releases containing terms to the effect of those pleaded in sub-paragraph (iv) above, the Client Release Letter has been issued giving rise to the operation of those releases;
- (viii) in respect of each of the Settlement Deeds containing terms to the effect of that pleaded in sub-paragraph (v) above, the settlement

sum has been paid to the group member giving rise to the operation of those releases;

- (ix) a claim for breach of contract of the kind alleged in paragraph 45 is one to which the releases pleaded in sub-paragraph (i)-(v) above apply; and
- (x) consequently, there has been an accord and satisfaction in respect of such claims.

Second alternative contractual claim

47. As to paragraph 47, it:

- (a) refers to and repeats paragraphs 14, 15 and 30 to 32 above;
- (b) says clause 3.2 of the Master Terms and the BOLR Policy operate in accordance with their terms;
- (c) says that, in accordance with clause 3.2(c) of the Master Terms, ~~in order to make the 8 August 2019 Changes,~~ it was required to consult with ampfpa within the meaning of clause 1.4 of the Master Terms, and that it did so; and
- (d) otherwise denies the allegations in the paragraph.

48. It denies the allegations in paragraph 48 and refers to and repeats paragraphs 22 to 26 above.

49. It denies the allegations in paragraph 49 and says that:

- (a) a BOLR Licensee Buy-Back Agreement (used here and below, as that term is used in the BOLR Policy) is available, in accordance with the terms of the BOLR Policy, to eligible group members referred to in paragraph 49;
- (b) group members referred to in paragraph 49 of the Claim would only have received a BOLR benefit payment if they had each satisfied all of the matters set out in sub-paragraph 17(d) above and such payment would have been subject to the matters set out in sub-paragraph 17(e) above; and

- (c) group members referred to in paragraph 49 of the Claim who have entered into a BOLR Licensee–Buy-Back Agreement have released any right to seek any damages resulting from such breach (which breach is denied).

Particulars

AMPFP refers to the particulars to sub-paragraph 36(b) above.

50. It denies the allegations in paragraph 50 and refers to and repeats paragraphs 22 to 26 and 30 to 32 above.
51. It denies the allegations in paragraph 51 and refers to and repeats paragraph 46 above.

No unconscionable conduct by AMPFP in relation to the 8 August 2019 Changes

51A. It refers to and repeats paragraphs 20–27, 30–32 and 34A–50 above.

51B. As to paragraph 51B:

- (a) as to sub-paragraph 51B(a), it admits that as at 8 August 2019 it knew that the BOLR Multiple of 4x was a premium to the external market value of comparable register rights, and otherwise denies the sub-paragraph;
- (b) it denies sub-paragraph 51B(b), and refers to and relies upon the terms of the BOLR Policy for their full force and effect;
- (c) as to sub-paragraph 51B(c), it:
- (i) admits that as at 8 August 2019 it knew that some Practices had acquired register rights at a price calculated by reference to a 4x multiple and some Practices had financed the acquisition of register rights through loans provided by AMP Bank secured by the value of the register rights calculated by reference to a 4x multiple; and
- (ii) otherwise denies sub-paragraph 51B(c);
- (d) as to sub-paragraph 51B(d), it:
- (i) admits that as at 8 August 2019 it knew that the 8 August 2019 Changes would adversely affect Practices who exited the AMPFP

- network under the BOLR Policy as amended by those changes as compared to exiting under the BOLR Policy without those changes;
- (ii) admits that as at 8 August 2019 it knew that some Practices would, following the 8 August 2019 Changes, have a practice finance loan that was greater than the value of their register rights when valued under the BOLR Policy dated 8 August 2019 (**2019 BOLR Policy**);
 - (iii) admits that as at 8 August 2019 it knew that some Practices who had already submitted their BOLR notice at that date would, by reason of the 8 August 2019 Changes, receive a BOLR Benefit payment that was less than the then outstanding amount of their practice finance loan;
 - (iv) admits that as at 8 August 2019 it knew that, having regard to the matters in sub-paragraph 51B(d)(iii) immediately above, some of the Practices there referred to might potentially become unable to repay their Practice finance loan;
 - (v) otherwise denies sub-paragraph 51B(d);
 - (vi) says that the 8 August 2019 Changes did not affect the operating income or cashflow of any Practice, or the capital position of any Practice that remained in the AMPFP network; and
 - (vii) refers to and repeats sub-paragraph 51B(h)(ii) below;
- (e) as to sub-paragraph 51B(e), it:
- (i) refers to and repeats sub-paragraphs 63(a)–(c) and 93(e) below;
 - (ii) admits that as at 8 August 2019 it knew that the BOLR Policy provided that the BOLR terms that applied were those in force on the exercise date, or the date the Practice surrendered its AR Agreement, whichever was the later; and
 - (iii) otherwise denies sub-paragraph 51B(e);
- (f) as to sub-paragraph 51B(f), it:

- (i) admits that as at 8 August 2019 it knew that some Practices had submitted BOLR notices prior to 8 August 2019, and that the BOLR Policy included a term that provided that notices may not be withdrawn by the Practice unless AMPFP agreed;
- (ii) says that in some cases it did agree to Practices withdrawing their BOLR notice; and
- (iii) otherwise denies sub-paragraph 51B(f);
- (g) as to sub-paragraph 51B(g), it:
 - (i) refers to and repeats sub-paragraphs 51B(d)(i)-(v) above;
 - (ii) admits that as at 8 August 2019 it knew that the 8 August 2019 Changes would increase the LVR of those Practice loans which were valued in accordance with the methodology set out in the BOLR Policy;
 - (iii) otherwise denies sub-paragraph 51B(g); and
 - (iv) refers to and repeats sub-paragraphs 51B(d)(vi)-(vii) above;
- (h) as to sub-paragraph 51B(h), it:
 - (i) admits that as at 8 August 2019 it knew by reason of the matters in sub-paragraph 51B(d)(ii) above that some Practices would have a shortfall in the ability to repay AMP Bank upon exiting the AMPFP network; and
 - (ii) says that AMP Bank worked with:
 - (A) Practices to avoid insolvency; and
 - (B) Practice principals who were guarantors of practice loans to avoid bankruptcy; and
 - (iii) otherwise denies sub-paragraph 51B(h);
- (i) as to sub-paragraph 51B(i), it:

- (i) refers to and repeats sub-paragraphs 51B(b), (d)(vi), (e)(i), (f)(ii) and (h)(ii) above and sub-paragraph 51B(j) below, and on account of those matters denies the sub-paragraph; and
- (ii) further and alternatively, says that the allegation that the 8 August 2019 Changes did not properly address or otherwise mitigate their consequences for many Practices rests upon a false premise that those Changes were required to do so, in circumstances where *ex hypothesi* AMPFP was contractually entitled to make the 8 August 2019 Changes;
- (j) it denies sub-paragraph 51B(j) and refers to and relies upon the terms of the BOLR Policy for their full force and effect;
- (k) it says that sub-paragraph 52B(k) is embarrassing and liable to be struck out and, under cover of that objection, denies the allegations in sub-paragraph 52B(k); and
- (l) as to sub-paragraph 51B(l), it:
 - (i) admits that as at 8 August 2019, it considered that the mental health of some Practices which were sole traders, or some Practice principals, might be adversely affected by the 8 August 2019 Changes, if made; and
 - (ii) otherwise denies sub-paragraph 51B(l).

51C. It denies paragraph 51C, and refers to and repeats sub-paragraphs 32(b)(ii) and 34B(b)-(d) above.

51D. As to paragraph 51D, it refers to the full terms and effect of the Authorised Representative Agreements (including the contractual documents they incorporated) and to s 917B of the *Corporations Act* 2001 (Cth), and denies the paragraph.

51E. It denies paragraph 51E.

51F. As to paragraph 51F, it:

- (a) admits that in making the 8 August 2019 Changes it engaged in conduct that was in trade or commerce; and

(b) otherwise denies paragraph 51F.

51G. It denies paragraph 51G.

Misleading and deceptive conduct

- 52. It admits paragraph 52.
- 52A. It admits paragraph 52A.
- 52B. It denies the allegations in paragraph 52B and says that the representations were made on 8 August 2019.
- 53. It admits paragraph 53.
- 54. It denies the allegations in paragraph 54 and refers to and repeats paragraph 32 above.
- 55. It denies the allegations in paragraph 55 and refers to and repeats paragraphs 22 to 27 and 30 to ~~33~~34D above.
- 55A. It denies the allegations in paragraph 55A and refers to and repeats paragraphs 21 to ~~33~~34D above.
- 55B. It denies the allegations in paragraph 55B and refers to and repeats paragraphs 21 to ~~33~~34D above.
- 56. It denies the allegations in paragraph 56.
- 57. It denies the allegations in paragraph 57.

Group Members who executed a BOLR Licensee Buy-Back Deed

- 58. It admits paragraph 58.
- 59. It admits paragraph 59.
- 60. As to paragraph 60, it:
 - (a) admits that some BOLR Licensee Buy-Back Deeds contain the definition pleaded in paragraph 60;
 - (b) says that not all BOLR Licensee Buy-Back Deeds are in identical terms;
 - (c) relies upon the individual BOLR Licensee Buy-Back Deeds for their full terms and effect; and

- (d) otherwise denies the allegations in paragraph 60.
61. As to paragraph 61, it:
- (a) admits that some BOLR Licensee Buy-Back Deeds contain the definition pleaded in paragraph 61;
 - (b) says that not all BOLR Licensee Buy-Back Deeds are in identical terms;
 - (c) relies upon the individual BOLR Licensee Buy-Back Deeds for their full terms and effect; and
 - (d) otherwise denies the allegations in paragraph 61.
62. As to paragraph 62, it:
- (a) admits that some BOLR Licensee Buy-Back Deeds contain a release to the effect of the term alleged at paragraph 62;
 - (b) says that not all BOLR Licensee Buy-Back Deeds are in identical terms;
 - (c) relies upon the individual BOLR Licensee Buy-Back Deeds for their full terms and effect; and
 - (d) otherwise denies the allegations in paragraph 62.
63. As to paragraph 63, it:
- (a) says that since 8 August 2019 it has, in some cases, calculated BOLR benefit payments in accordance with the valuation methodology set out in the BOLR Policy as amended on 8 August 2019 (as it was entitled to do);
 - (b) says that since 8 August 2019 it has, in some cases, calculated BOLR benefit payments in accordance with the methodology that applied prior to the amendments to the BOLR Policy of 8 August 2019;
 - (c) says further that since 8 August 2019, in some cases, by negotiation with the particular Practice, BOLR benefit payments paid to Practices included amounts in addition to the amount calculated in accordance with the valuation methodology set out in the BOLR Policy as amended on 8 August 2019; and

Particulars

Of the approximately 161 Practices that have ~~an exercise date after 8 August 2019 and have~~ completed a BOLR transaction since 8 August 2019, approximately:

- ~~6984~~ were paid a BOLR benefit payment calculated in accordance with the valuation methodology in the 2019 BOLR Policy ~~dated 8 August 2019 (2019 BOLR Policy)~~, 69 of those following a mediation;
- ~~4834~~ were paid a BOLR benefit payment calculated in accordance with the valuation methodology in the 2019 BOLR Policy, but also received an additional benefit beyond the terms of the 2019 BOLR Policy following negotiation or mediation ~~with AMPFP;~~
- ~~3233~~ were paid a BOLR benefit payment calculated using a BOLR Multiple of 3.5x, 45 of those following mediation and some with additional benefits; and
- ~~1243~~ were paid a BOLR benefit payment calculated using a BOLR Multiple of 4x.

The additional benefits beyond the terms of the 2019 BOLR Policy that were included in some Buy-Back Agreements or Settlement Deeds include:

- Debt waiver by AMP Bank or payment of shortfall by AMPFP to AMP Bank;
- Variation to practice finance loan terms;
- Waiver of or variation to restraints on employment or customer solicitation;
- Waiver or refund of various fees;
- Ex-gratia payments; and

- Waiver of certain requirements of the BOLR Policy (such as write-off of remediation costs or exclusion of certain adjustments).

- (d) otherwise denies the allegations in paragraph 63.
64. It denies the allegations in paragraph 64, refers to and repeats paragraphs 17(d)(i), 28, 29, 33, and 42 above, and says further that, even if the determination in paragraph 63 was an error (which is denied), it was not a manifest error within the proper construction of that phrase in the context of each BOLR Licensee Buy-Back Deed, including because the register valuation was in each case specifically accepted by the selling practice following the process in paragraph 17(d)(i) above.
65. It denies the allegations in paragraph 65.
66. As to paragraph 66, it:
- (a) refers to and repeats paragraph 63 above; and
 - (b) otherwise denies the allegations in paragraph 66.
67. It denies the allegations in paragraph 67 and refers to and repeats paragraphs 64 and 66 above.
68. As to paragraph 68, it:
- (a) repeats paragraph 63 above; and
 - (b) otherwise denies the allegations in paragraph 68.
69. It denies the allegations in paragraph 69.
70. It denies the allegations in paragraph 70 and says further that group members who have entered into a BOLR Licensee Buy-Back Deed which contains a release to the effect of that pleaded in paragraph 62 of the Claim (or to similar effect) have released AMPFP from all claims arising out of or in connection with the facts and circumstances giving rise to the BOLR benefit payment and/or that if there is any such claim (which is denied) there has been an accord and satisfaction in respect of such claims by reason of the following matters:

- (a) some of the relevant BOLR Licensee Buy-Back Deeds contained a term to the effect that, on payment by AMPFP of the BOLR Benefit (as defined in the agreement) to the Practice (as defined in the agreement), the group member released AMPFP from all and any present or future claims, proceedings, suits, and liabilities arising out of or in connection with the facts or circumstances giving rise to the BOLR Benefit;
- (b) some of the relevant BOLR Licensee Buy-Back Deeds contained a term to the effect that on and from the Completion Date (as defined in the agreement) the group member released AMPFP from all and any present or future claims, proceedings, suits and liabilities arising out of or in connection with the Dispute (as defined in the agreement), the BOLR Policy (or superseded versions and associated communications) and the Valuation Terms or the BOLR Benefit (each as defined in the agreement);
- (c) in respect of each of the agreements containing terms to the effect of those pleaded in sub-paragraphs (a) or (b) above, either the Completion Date has occurred or AMPFP has made the payment giving rise to the operation of those releases;
- (d) a claim for relief of the kind alleged in paragraph 70 is one to which the releases pleaded in sub-paragraph (a) or (b) above apply; and
- (e) consequently, there has been an accord and satisfaction in respect of such claims.

Particulars

AMPFP refers to the particulars to sub-paragraph 36(b) above.

Other Buy-Back Agreements with payments based on Register Value

71. It admits paragraph 71 and says further that there are four ~~seven~~ Other Deeds.

Particulars

The Other Deeds have been produced to the Applicant with the following document reference numbers:

~~AMP.5800.0006.0152~~

~~AMP.5800.0006.0154~~

~~AMP.5800.0006.0155~~

~~AMP.5800.0006.0156~~

~~AMP.5800.0006.0157~~

~~AMP.5800.0006.0158~~

AMP.5800.0240.0002

AMP.5800.0240.0009

AMP. 5800.0006.0265

AMP.5800.0240.0008

72. It admits paragraph 72.
73. It admits paragraph 73.
74. It admits paragraph 74.
75. As to paragraph 75, it:
- (a) admits that each Other Deed contains a release which takes effect as alleged at paragraph 75; and
 - (b) otherwise denies the allegations in paragraph 75.
76. As to paragraph 76, it:
- (a) says only one Other Deed contains a release said to take effect on the Completion Date;

Particulars

The deed produced to the Applicant with the document reference number AMP.5800.0006.0265.

- (b) says that in that deed the words “(with the exception of a claim or action for breach or enforcement of this Agreement)” are found in clauses agreeing not to commence or maintain action against AMPFP, but do not appear in the clause effecting the release;
- (c) says Completion Date is defined in that deed to mean ‘17 November 2020 or such other date agreed between AMPFP and the Practice’;

- (d) says further that by clause 4.2(c) of that deed, the Practice the party to the deed agreed to opt-out of this proceeding; and
 - (e) otherwise denies the allegations in paragraph 76.
77. As to paragraph 77, it:
- (a) refers to and repeats sub-paragraphs 63(a), (b) and (c) above; and
 - (b) otherwise denies the allegations in paragraph 77.
78. It denies paragraph 78 and refers to and repeats paragraphs 17(d)(i), 28, 29, 33, and 42 above, and says further, even if the determination in paragraph 77 was an error (which is denied), it was not a manifest error within the proper construction of that phrase in the context of each Other Deed, including because the register valuation was in each case specifically accepted by the selling practice following the process in paragraph 17(d)(i) above.
79. It denies the allegations in paragraph 79.
80. As to paragraph 80, it:
- (a) refers to and repeats sub-paragraphs 63(a), (b) and (c) above; and
 - (b) otherwise denies the allegations in paragraph 80.
81. It denies the allegations in paragraph 81 and refers to and repeats paragraphs 78 and 80 above.
82. As to paragraph 82, it:
- (a) refers to and repeats paragraph 68 above; and
 - (b) otherwise denies the allegations in paragraph 82.
83. It denies the allegations in paragraph 83.
84. It denies the allegations in paragraph 84 and refers to and repeats paragraphs 72 to 83 above and says further that it relies upon each Other Deed for its full terms and effect.
85. It denies the allegations in paragraph 85 and refers to and repeats paragraph 76 above.

86. It denies the allegations in paragraph 86 and says further that group members who have entered into an Other Deed have released AMPFP from all claims arising out of or in connection with the facts and circumstances giving rise to the BOLR benefit payment and/or that, if there is any such claim (which is denied), there has been an accord and satisfaction in respect of such claims by reason of the following matters:

- (a) each of the Other Deeds contained terms to the effect that:
 - (i) on payment by AMPFP of the Register Value or Agreed Payment (as defined in the deed) the group member released AMPFP from all and any claims, proceedings, suits, liabilities, demands, actions, damages, losses, costs and expenses, whether known or not and whether disclosed or not, arising out of or in connection with the facts or circumstances giving rise to the Register Value or under or in relation to the AR Agreement, including the Master Terms and the BOLR Policy or the agreement (in each case as defined in the deed); or
 - (ii) on payment by AMPFP of the Register Value (as defined in the deed) the group member released AMPFP from all and any present or future claims, proceedings, suits and liabilities arising out of or in connection with the facts or circumstances giving rise to the Agreed Payment or under or in relation to the AR Agreement, including the Master Terms and the BOLR Policy, the Bank Loan or the agreement (in each case as defined in the deed); or
 - (iii) on and from the Completion Date (as defined in the deed), the group member released AMPFP and the AMP Group from all and any present or future claims, proceedings, suits and liabilities arising out of or in connection with the BOLR Policy (including any superseded version of the BOLR Policy and associated communications) and the Valuation Terms (including any change thereto) or the BOLR Benefit (in each case as defined in the deed);

- (b) in respect of each of the Other Deeds, either the Completion Date has occurred or AMPFP has made the payment giving rise to the operation of those releases;
- (c) a claim for relief of the kind alleged in paragraph 86 is one to which the releases pleaded in sub-paragraph (a) above apply; and
- (d) consequently, there has been an accord and satisfaction in respect of such claims.

The releases in the Buy-Back Agreements

- 87. It does not plead to paragraph 87 as that paragraph makes no allegations against it.
- 88. As to paragraph 88, it:
 - (a) says that the majority of Buy-Back Agreements contain one or more of the terms pleaded in paragraph 88;
 - (b) says that not all Buy-Back Agreements are in identical terms;
 - (c) relies upon the individual Buy-Back Agreements for their full terms and effect; and
 - (d) otherwise denies the allegations in paragraph 88.
- 89. It denies the allegations in paragraph 89.
- 90. It admits paragraph 90.
- 91. It admits paragraph 91.
- 92. It denies the allegations in paragraph 92.
- 93. It denies the allegations in paragraph 93 and says further that:
 - (a) each Buy-Back Agreement took account of the specific characteristics of the Practice party to that agreement;
 - (b) there was the opportunity for each Buy-Back Agreement to be individually negotiated, and some Practices did so;
 - (c) each Practice had the opportunity to seek independent legal, tax and accounting advice, and some Practices did so;

- (d) ampfpa representatives and their lawyers negotiated changes to the terms used in Buy-Back Agreements; and
 - (e) as set out in the BOLR Policy, a BOLR transaction was not compulsory and a practice to practice transaction (which would not have required entry into a Buy-Back Agreement) was the preferred exit arrangement for Practices.
94. It denies the allegations in paragraph 94 and says that the terms of the BOLR Policy require a Practice to (among other things) enter into a BOLR Licensee Buy-Back Agreement (as that term is used in the BOLR Policy) in order to receive a BOLR benefit payment.
95. It denies the allegations in paragraph 95, refers to and repeats sub-paragraphs 63(c), 93(e), and paragraph 94 above, and says further that the purpose of the Buy-Back Agreements was to finalise the contractual and legal arrangements between the Practice and AMPFP and the terms of those agreements must be considered as a whole and in the context of the AR Agreement (including the BOLR Policy).
96. It denies the allegations in paragraph 96 and says further that, to the extent that a Buy-Back Agreement contained one of the terms pleaded in paragraph 88 of the Claim, that agreement was a commercial bargain on ordinary commercial terms struck between the parties which provided for value to be provided to the group member.
97. It denies the allegations in paragraph 97 and says the releases were reasonably necessary to protect AMPFP's legitimate interests, including because AMPFP had a legitimate commercial interest in minimising the risk of litigation, particularly in circumstances where litigation had been threatened and where it was making a payment to the persons providing such releases.
98. It says paragraph 98 is embarrassing and liable to be struck out. Under cover of that objection, it denies the allegations in paragraph 98.
99. It denies the allegations in paragraph 99, refers to and repeats paragraphs 89, 92, 93, 95 and 97 above, and says further that the term:

- (a) is transparent within the meaning of s 24(3) of the ACL; and
- (b) must be assessed in the context of the Buy-Back Agreement as a whole, including, in some cases, the express acknowledgment by Practices that:
 - (i) they had the opportunity to obtain their own independent accounting, taxation and legal advice;
 - (ii) they obtained independent advice or elected not to obtain such advice; and
 - (iii) they have reviewed, understand and agreed to the terms and conditions contained in the Buy-Back Agreement.

100. It denies the allegations in paragraph 100 and refers to and repeats paragraphs 92, 93, 94 and 99 above.

100A. In further answer to the allegations made in the Claim, it says:

- (a) some of the Buy-Back Agreements contained terms to the effect that:
 - (i) a group member agreed not to commence or maintain any claim or action (in some cases expressly including as part of a class action and/or including an obligation to opt out of such action) against AMPFP and the AMP Group relating to the BOLR Policy, Termination Notice and/or Buy Back Benefit (in each case as defined in the agreement); and
 - (ii) the group member agreed to indemnify AMPFP and the AMP Group against any liability, loss or cost arising from a breach of the term pleaded in sub-paragraph (i) above;

Particulars

The document IDs of the Buy-Back Agreements which contain terms to the effect pleaded at sub-paragraph 100A4(a) above, that have been identified at the date of the ~~Third Second~~ Further Amended Defence, are set out in Schedule 3.

- (b) some of the Buy-Back Agreements (other than those pleaded in sub-paragraph (a) above) contained terms to the effect that:

- (i) a group member agreed not to commence or maintain any claim or action (in some cases expressly including as part of a class action) against AMPFP and the AMP Group relating to the Dispute, BOLR Policy, and/or the Valuation Terms or the BOLR Benefit (in each case as defined in the agreement);
- (ii) the group member agreed to indemnify AMPFP and the AMP Group against any liability, loss or cost arising from a breach of the term pleaded in sub-paragraph (i) above; and
- (iii) in some cases, that the group member would pay to AMPFP any damages or compensation actually received under any such class action;

Particulars

The document IDs of the Buy-Back Agreements which contain terms to the effect pleaded at sub-paragraph 100A4(b) above, that have been identified at the date of the ~~Third Second~~ Further Amended Defence, are set out in Schedule 3.

- (c) some of the Buy-Back Agreements (other than those pleaded in sub-paragraphs (a) and (b) above) contained terms to the effect that:
 - (i) the group member agreed that it would not make any claim against AMPFP for compensation or payment arising out of or in connection with the facts or circumstances giving rise to the Agreed Payment, or Register Value or under or in relation to the AR Agreement including under the Master Terms and the BOLR Policy (in each case as defined in the agreement); and
 - (ii) the group member indemnified AMPFP for all claims, proceedings, suits, liabilities, demands, actions, damages, losses, costs and expenses suffered by AMPFP in relation to a breach of the agreement;

Particulars

The document IDs of the Buy-Back Agreements which contain terms to the effect pleaded at sub-paragraph 100A4(c) above, that have been identified at the date of the ~~Third Second~~ Further Amended Defence, are set out in Schedule 3.

- (d) some of the Institutional Releases contained terms to the effect that:
- (i) the group member agreed not to commence or maintain any claim or action (in some cases expressly including as part of a class action and/or expressly acknowledging the Claim) against AMPFP and the AMP Group relating to the BOLR Policy, Termination Notice, Buy Back Benefit and/or Transfer Deed (in each case as defined in the agreement); and
 - (ii) the group member agreed to indemnify AMPFP against any liability, loss or cost arising from a breach of the term pleaded in sub-paragraph (i) above;

Particulars

The document IDs of the Institutional Releases which contain terms to the effect pleaded at sub-paragraph 100A4(d) above, that have been identified at the date of the ~~Third Second~~ Further Amended Defence, are set out in Schedule 3.

- (e) some of the Institutional Releases contained terms to the effect that:
- (i) the group member agreed not to commence or maintain any claim or action (in some cases expressly including as part of a class action and/or expressly acknowledging the Claim) against AMPFP and the AMP Group relating to the Standard Practices, Termination Notice and/or Buy Back Benefit (in each case as defined in the agreement, with the exception of Standard Practices, which is not defined, but should be construed to be a reference to the Master Terms and the BOLR Policy); and

- (ii) the group member agreed to indemnify AMPFP against any liability, loss or cost arising from a breach of the term pleaded in sub-paragraph (i) above;

Particulars

The document IDs of the Institutional Releases which contain terms to the effect pleaded at sub-paragraph 100A4(e) above, that have been identified at the date of the ~~Third Second~~ Further Amended Defence, are set out in Schedule 3.

- (f) some of the Settlement Deeds contained terms to the effect that:
 - (i) the group member agreed not to commence or maintain any claim or action, including as a member of any class action, against AMPFP relating to the 2019 BOLR Amendments (as defined in the agreement) and further agreed to opt out of the Claim during the first opt out period and to also opt out of any other class actions that are commenced in connection with the 2019 BOLR Amendments (as defined in the agreement); and
 - (ii) the group member agreed to indemnify AMPFP against any liability, loss or cost arising from a breach of the term pleaded in sub-paragraph (i) above;

Particulars

The document IDs of the Settlement Deeds which contain terms to the effect pleaded at sub-paragraph 100A4(f) above, that have been identified at the date of the ~~Third Second~~ Further Amended Defence, are set out in Schedule 3.

- (g) ~~at least one~~ some of the Settlement Deeds contained terms to the effect that:
 - (i) the group member agreed not to make any claim against AMPFP for compensation or payment arising out of or in connection with the facts of circumstances giving rise to the Dispute or Settlement Amount (each as defined in the agreement) or under or in relation

to the AR Agreement, including under the Master Terms and the BOLR Policy (each as defined in the agreement); and

- (ii) the group member agreed to indemnify AMPFP against any loss or expense arising from a breach of the term pleaded in sub-paragraph (i) above;

Particulars

The document IDs of the Settlement Deeds which contain terms to the effect pleaded at sub-paragraph 100A4(g) above, that have been identified at the date of the Third Second Further Amended Defence, are set out in Schedule 3.

~~(h) at least one of the Settlement Deeds contained terms to the effect that the group member agreed to indemnify AMPFP against any loss or expense AMPFP may incur if that group member makes a demand in relation to the matters which are the subject of releases given in connection with the settlement of identified legal proceedings;~~

Particulars

~~The document IDs of the Settlement Deeds which contain terms to the effect pleaded at sub-paragraph 100A1(h) above, that have been identified at the date of the Second Further Amended Defence, are set out in Schedule 3.~~

- (i) by reason of the matters that are alleged by the Applicant, the claims set out in the Claim are of a kind to which the terms pleaded in paragraphs (a)(i), (b)(i), (c)(i), (d)(i), (e)(i), (f)(i), or (g)(i) ~~or (h)~~ apply;
- (j) in the event that a group member that has entered into a Buy-Back Agreement, Institutional Release or Settlement Deed containing a term of the kind pleaded in (a)(i), (b)(i), (c)(i), (d)(i), (e)(i), (f)(i), or (g)(i) ~~or (h)~~ above makes or maintains a claim of the kind set out in the Claim, he, she or it has breached that term;
- (k) by reason of the terms pleaded in sub-paragraphs (a)(ii), (b)(ii), (c)(ii), (d)(ii), (e)(ii), (f)(ii), or (g)(ii) ~~or (h)~~ above, a group member that has

entered into a Buy-Back Agreement, Institutional Release or Settlement Deed containing the terms pleaded in sub-paragraphs (a), (b), (c), (d), (e), (f), or (g) ~~or (h)~~ above is liable to indemnify AMPFP for any amount that AMPFP is required to pay to such group member as a result of this proceeding (which is denied) and AMPFP's costs in respect of this proceeding; and

- (l) further or in the alternative, any such liability of a group member who has entered into a Buy-Back Agreement, Institutional Release or Settlement Deed containing the terms pleaded in sub-paragraphs (a), (b), (c), (d), (e), (f), or (g) ~~or (h)~~ above should be set off against any amount which AMPFP is required to pay to that group member as a result of the claims in this proceeding (which are denied).

Unconscionable conduct

101. It does not plead to paragraph 101, as that paragraph makes no allegation against it.

102. As to paragraph 102, it:

- (a) admits that it knew that it was possible that one or more Practices might challenge the legal validity of the 8 August 2019 Changes, and that from 28 July 2020 it knew that the Applicant had commenced this proceeding, and otherwise denies sub-paragraph (a);
- (b) denies the allegations in sub-paragraph (b) and refers to and repeats paragraphs 63(b), 63(c) and 97 above;
- (c) denies the allegations in sub-paragraph (c) and refers to and repeats paragraph 93 above;
- (d) denies the allegations in sub-paragraph (d), says there was no "entitlement" to a BOLR benefit payment unless the conditions of the BOLR Policy were met and those conditions included entry into a BOLR Licensee Buy-Back Agreement (that is, the agreement contemplated by the BOLR Policy to give effect to a buyback transaction), and refers to and repeats paragraphs 17(d) and 94 above;

- (e) says that sub-paragraph (e) is embarrassing and liable to be struck out and, under cover of that objection, denies the allegations in sub-paragraph (e);
 - (f) denies the allegations in sub-paragraph (f) and refers to and repeats paragraphs 95 and 99(b) above; ~~and~~
 - (g) says that sub-paragraph (g) is embarrassing and liable to be struck out and, under cover of that objection, denies the allegations in sub-paragraph (g) and refers to and repeats paragraphs 93(e) and 102(d) above;
 - (h) admits that some group members received a Termination Letter (as defined in paragraph 109 of the Claim), refers to and repeats paragraph 114 below and otherwise denies the allegations in sub-paragraph (h);
 - (i) as to sub-paragraph (i):
 - (i) admits that on 26 July 2021 it announced a new service model which released institutional ownership of clients and concluded the BOLR Policy, effective 1 January 2022;
 - (ii) further admits that as a result of the cessation of the BOLR Policy, any Practice wishing to exercise rights under the BOLR Policy needed to give a BOLR notice by 31 December 2021;
 - (iii) says that it consulted with The Advisers Association regarding the move to the new service model and the cessation of the BOLR Policy;
 - (iv) says further that only 5 group members have given a BOLR notice since 26 July 2021 and of them, only 3 have entered into a Buy-Back Agreement containing a release, 2 of those following a mediation;
 - (v) otherwise denies the allegations in sub-paragraph (i).
103. It denies the allegations in paragraph 103 and refers to and repeats paragraphs 63, 93, 95, 97, 99(b) and 102(d) above.

104. It denies the allegations in paragraph 104 and refers to and repeats paragraph 103.

104A. As to paragraph 104A:

- (a) it says that the paragraph is embarrassing and liable to be struck out; and
- (b) under cover of that objection, it admits that since 8 August 2019 it has acted on the basis that (as it says is the case) the 8 August 2019 Changes were effective on and from that date, and otherwise denies the paragraph.

105. It denies the allegations in paragraph 105.

106. It denies the allegations in paragraph 106.

107. It denies the allegations in paragraph 107.

Termination Option Group Members

108. It does not plead to paragraph 108, as that paragraph makes no allegation against it.

109. It admits paragraph 109, and says:

- (a) clause 15.3 of the Master Terms provides that it may terminate the Authorised Representative Agreement upon not less than 90 days' written notice;
- (b) clause 14.2(b) of the Master Terms provides that it may revoke the Authorisation of the Authorised Representatives by giving not less than 90 days' written notice;
- (c) clause 16 of the Master Terms sets out the consequences of termination and the matters pleaded at sub-paragraph 109(d) are the consequences there set out;
- (d) the options pleaded at sub-paragraph 109(e) in some cases go beyond the options it was contractually required to provide; and
- (e) that it will refer to the Termination Letters for their full terms and effect.

110. It admits paragraph 110, and says that it was not required to offer any Termination Option Group Member a BOLR benefit payment calculated based on a 4x multiple.
111. It says that paragraph 111 is embarrassing and liable to be struck out. Under cover of that objection, it does not admit the allegations in paragraph 111 because it does not know whether most or all of the options, or potential options, involved the group member granting a release to AMPFP, but says that terms of the agreements entered into by Termination Option Group Members were negotiable.
112. It admits paragraph 112.
113. It denies paragraph 113, and says that the Termination Option Group members were not entitled to a BOLR benefit payment calculated based on a 4x multiple.
114. As to paragraph 114, it:
- (a) refers to and repeats paragraph 110 to 113 above and otherwise denies the allegations in sub-paragraph (a);
 - (b) refers to and repeats sub-paragraphs 102(a) and (b) above and otherwise denies the allegations in sub-paragraph (b);
 - (c) refers to and repeats paragraph 93 above and denies the allegations in sub-paragraph (c);
 - (d) refers to and repeats paragraph 94 above and denies the allegations in sub-paragraph (d);
 - (e) says that sub-paragraph (e) is embarrassing and liable to be struck out and, under cover of that objection, denies the allegations in sub-paragraph (e);
 - (f) denies the allegations in sub-paragraph (f) and refers to and repeats paragraphs 95 and 99(b) above;
 - (g) refers to and repeats paragraphs 109 and 110 above, denies the allegations in sub-paragraph (g), and says that it was under no obligation to suspend the operation of the ordinary contractual arrangements with group members pending the outcome of this proceeding; and

- (h) refers to and repeats paragraph 109 and denies the allegations in sub-paragraph (h).
115. It admits that some group members who received a Termination Letter entered into agreements that contained a release and otherwise denies the allegations in paragraph 115.
116. It refers to and repeats paragraph 114 above and otherwise denies the allegations in paragraph 116.
117. It denies the allegations in paragraph 117, and refers to and repeats paragraphs 109, 110 and 114(g) above.
118. It denies the allegations in paragraph 118, and refers to and repeats paragraph 117 above.
119. It denies the allegations in paragraph 119.
120. It denies the allegations in paragraph 120.
121. It denies the allegations in paragraph 121.

Date: ~~6 July 2022~~ ~~6 October 2022~~ 24 October 2022



.....
Signed by Natalie Tatasciore
Lawyer for the Respondent

This ~~Third Second~~ Further Amended Defence to the ~~Third Second~~ Further Amended Statement of Claim was prepared by David Batt ~~KQC~~, Tamieka Spencer Bruce and Ahmed Terzic of counsel.

Certificate of lawyer

I, Natalie Tatasciore, certify to the Court that, in relation to the ~~Third~~ Second Further Amended Defence to the ~~Third~~ Second 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: ~~6 July 2022~~ ~~6 October 2022~~ 24 October 2022



.....
Signed by Natalie Tatasciore
Lawyer for the Respondent

Schedule 1 to the ~~Third Second~~ Further Amended Defence

The particulars for sub-paragraph 36(b) of the ~~Third Second~~ Further Amended Defence (as at ~~24 October 2022-6 October 2022-6 July 2022~~) are set out in the table below.

Buy-Back Agreements (as at 24 October 2022-6 October 2022-6 July 2022)				
AMP.5800.0006.0001	AMP.5800.0006.0094	AMP.5800.0006.0161	AMP.5800.0006.0204	AMP.5800.0006.0291
AMP.5800.0006.0002	AMP.5800.0006.0095	AMP.5800.0006.0163	AMP.5800.0006.0202	AMP.5800.0006.0292
AMP.5800.0006.0003	AMP.5800.0006.0096 <u>AMP.5800.0006.0097</u>	AMP.5800.0006.0164	AMP.5800.0006.0203	AMP.5800.0006.0293
AMP.5800.0006.0004	AMP.5800.0006.0097	AMP.5800.0006.0166	AMP.5800.0183.0001	AMP.5800.0006.0294
AMP.5800.0006.0005	AMP.5800.0006.0098	AMP.5800.0006.0168	AMP.5800.0006.0207	AMP.5800.0006.0295
AMP.5800.0006.0006	AMP.5800.0006.0099	AMP.5800.0006.0170	<u>AMP.5800.0237.0010</u> AMP.5800.0006.0208	AMP.5800.0172.0001
AMP.5800.0006.0007	AMP.5800.0006.0100	AMP.5800.0006.0172	AMP.5800.0006.0209	AMP.5800.0175.0002
AMP.5800.0006.0008	AMP.5800.0006.0101	AMP.5800.0006.0173	AMP.5800.0006.0252	AMP.5800.0175.0003
AMP.5800.0006.0009	AMP.5800.0006.0102	AMP.5800.0006.0174	<u>AMP.5800.0237.0008</u> AMP.5800.0006.0257	<u>AMP.5800.0237.0001</u> AMP.5800.0175.0004
AMP.5800.0006.0010	AMP.5800.0006.0103	<u>AMP.5800.0237.0002</u> AMP.5800.0006.0175	AMP.5800.0006.0262 AMP.5800.0006.0263	AMP.5800.0175.0005
AMP.5800.0006.0011	AMP.5800.0006.0104 <u>AMP.5800.0277.0004</u>	AMP.5800.0006.0177	AMP.5800.0006.0257	AMP.5800.0175.0006
AMP.5800.0006.0012	AMP.5800.0204.0001	AMP.5800.0006.0178	AMP.5800.0205.0001	AMP.5800.0175.0007

Buy-Back Agreements (as at 24 October 2022 6 October 2022 <u>6 July 2022</u>)				
AMP.5800.0006.0013	AMP.5800.0006.0106	AMP.5800.0006.0179	AMP.5800.0006.0265	AMP.5800.0175.0008
AMP.5800.0006.0014	AMP.5800.0006.0107	AMP.5800.0006.0180	AMP.5800.0006.0266	AMP.5800.0175.0009
AMP.5800.0006.0015	AMP.5800.0006.0108	AMP.5800.0006.0181	AMP.5800.0006.0267	AMP.5800.0201.0006
AMP.5800.0006.0016	AMP.5800.0241.0003 AMP.5800.0006.0109	AMP.5800.0006.0182	AMP.5800.0006.0268	AMP.5800.0201.0007
AMP.5800.0006.0017	AMP.5800.0006.0110	AMP.5800.0006.0183	AMP.5800.0006.0269	AMP.5800.0201.0008
AMP.5800.0006.0018	AMP.5800.0006.0111	AMP.5800.0006.0184	AMP.5800.0006.0270	AMP.5800.0201.0009
AMP.5800.0006.0019	AMP.5800.0006.0112	AMP.5800.0006.0185	AMP.5800.0006.0271	AMP.5800.0201.0010
AMP.5800.0006.0020	AMP.5800.0006.0113	AMP.5800.0006.0186	AMP.5800.0006.0272	AMP.5800.0201.0011
AMP.5800.0006.0021	AMP.5800.0006.0114	AMP.5800.0006.0187	AMP.5800.0006.0273	AMP.5800.0201.0012 AMP.5800.0201.0013 AMP.5800.0201.0014
AMP.5800.0006.0022	AMP.5800.0006.0115	AMP.5800.0006.0190	AMP.5800.0006.0274	AMP.5800.0201.0013
AMP.5800.0006.0023	AMP.5800.0006.0116	AMP.5800.0006.0191	AMP.5800.0006.0275	AMP.5800.0201.0014
AMP.5800.0006.0024	AMP.5800.0006.0117	AMP.5800.0006.0192	AMP.5800.0006.0276	AMP.5800.0201.0015
AMP.5800.0006.0025	AMP.5800.0006.0151	AMP.5800.0006.0193	AMP.5800.0006.0277	AMP.5800.0201.0016
AMP.5800.0006.0026	AMP.5800.0006.0152	AMP.5800.0006.0194	AMP.5800.0006.0278	AMP.5800.0201.0018
AMP.5800.0006.0088	AMP.5800.0006.0154	AMP.5800.0006.0195	AMP.5800.0006.0279	AMP.5800.0237.0005 AMP.5800.0201.0019
AMP.5800.0006.0089	AMP.5800.0006.0155	AMP.5800.0006.0196	AMP.5800.0183.0002	AMP.5800.0201.0001
AMP.5800.0006.0090	AMP.5800.0006.0156	AMP.5800.0006.0197	AMP.5800.0237.0007	AMP.5800.0201.0002

Buy-Back Agreements (as at 24 October 2022 6 October 2022 6 July 2022)				
			AMP.5800.0006.0287	
AMP.5800.0006.0091	AMP.5800.0240.0002 AMP.5800.0006.0157	AMP.5800.0006.0198	AMP.5800.0006.0288	AMP.5800.0201.0003
AMP.5800.0006.0092	AMP.5800.0240.0009 AMP.5800.0006.0158	AMP.5800.0237.0006 AMP.5800.0006.0199	AMP.5800.0006.0289	AMP.5800.0213.0004
AMP.5800.0006.0093	AMP.5800.0006.0159	AMP.5800.0006.0200	AMP.5800.0006.0290	AMP.5800.0237.0009 AMP.5800.0218.0005
AMP.5800.0222.0019	AMP.5800.0222.0020	AMP.5800.0224.0001	AMP.5800.0224.0002	AMP.5800.0226.0004
AMP.5800.0226.0005	AMP.5800.0226.0024	AMP.5800.0226.0006	AMP.5800.0226.0007	AMP.5800.0226.0008
AMP.5800.0226.0010	AMP.5800.0240.0005 AMP.5800.0226.0024	AMP.5800.0226.0013	AMP.5800.0226.0014	AMP.5800.0226.0015
AMP.5800.0226.0016	AMP.5800.0226.0017	AMP.5800.0226.0022	AMP.5800.0226.0018	AMP.5800.0226.0020
AMP.5800.0226.0001	AMP.5800.0226.0002	AMP.5800.0226.0003	AMP.5800.0225.0002	AMP.5800.0225.0003
AMP.5800.0235.0026	AMP.5800.0235.0030	AMP.5800.0240.0001	AMP.5800.0242.0001	AMP.5800.0240.0006
AMP.5800.0240.0007	AMP.5800.0240.0010	AMP.5800.0241.0002	AMP.5800.0240.0008	AMP.5800.0240.0004

Schedule 2 to the ~~Third~~ ~~Second~~ Further Amended Defence

The particulars for sub-paragraphs 46(d) of the ~~Third~~ ~~Second~~ Further Amended Defence (as at ~~24 October 2022~~ ~~6 October 2022~~ ~~6 July 2022~~) are set out in the table below.

Institutional Releases (as at 24 October 2022 6 October 2022 6 July 2022)			
AMP.5800.0006.0028	AMP.5800.0006.0082	AMP.5800.0006.0217	AMP.5800.0202.0006
AMP.5800.0006.0030	AMP.5800.0006.0084	AMP.5800.0006.0218	AMP.5800.0202.0007
AMP.5800.0006.0032	AMP.5800.0006.0085	AMP.5800.0006.0220	AMP.5800.0206.0003
AMP.5800.0006.0034	AMP.5800.0006.0119	AMP.5800.0006.0222	AMP.5800.0206.0004
AMP.5800.0006.0035	AMP.5800.0237.0014 AMP.5800.0006.0124	AMP.5800.0006.0225	AMP.5800.0206.0005
AMP.5800.0006.0037	AMP.5800.0006.0123	AMP.5800.0006.0226	AMP.5800.0206.0007
AMP.5800.0006.0041	AMP.5800.0006.0124	AMP.5800.0006.0230	AMP.5800.0206.0009
AMP.5800.0006.0042	AMP.5800.0006.0127	AMP.5800.0006.0233	AMP.5800.0206.0013
AMP.5800.0006.0044	AMP.5800.0006.0129	AMP.5800.0006.0235	AMP.5800.0238.0001 AMP.5800.0206.0016
AMP.5800.0006.0048	AMP.5800.0006.0131	AMP.5800.0006.0237	AMP.5800.0206.0018
AMP.5800.0006.0050	AMP.5800.0006.0133	AMP.5800.0006.0239	AMP.5800.0206.0021
AMP.5800.0006.0051	AMP.5800.0006.0136	AMP.5800.0006.0241	AMP.5800.0206.0022
AMP.5800.0006.0054	AMP.5800.0006.0138	AMP.5800.0006.0243	AMP.5800.0206.0025
AMP.5800.0006.0059	AMP.5800.0006.0140	AMP.5800.0006.0244	AMP.5800.0206.0027
AMP.5800.0006.0062	AMP.5800.0006.0142	AMP.5800.0006.0246	AMP.5800.0206.0031

AMP.5800.0006.0064	AMP.5800.0006.0143	AMP.5800.0006.0249	AMP.5800.0206.0032
AMP.5800.0006.0065	AMP.5800.0006.0146	AMP.5800.0006.0254	AMP.5800.0206.0033
AMP.5800.0006.0068	AMP.5800.0006.0147	AMP.5800.0006.0260	AMP.5800.0209.0004
AMP.5800.0006.0070	AMP.5800.0006.0149	AMP.5800.0006.0281	AMP.5800.0206.0038
AMP.5800.0006.0071	AMP.5800.0006.0189	AMP.5800.0006.0282	AMP.5800.0206.0040
AMP.5800.0006.0073	AMP.5800.0006.0206	AMP.5800.0006.0283	AMP.5800.0206.0042
AMP.5800.0006.0075	AMP.5800.0006.0211	AMP.5800.0006.0284	AMP.5800.0206.0044
AMP.5800.0006.0078	AMP.5800.0006.0213	AMP.5800.0006.0285	AMP.5800.0211.0012
AMP.5800.0006.0079	AMP.5800.0006.0215	AMP.5800.0202.0005	AMP.5800.0211.0013
AMP.5800.0211.0014	AMP.5800.0211.0035	AMP.5800.0218.0007	AMP.5800.0222.0008
AMP.5800.0218.0010	AMP.5800.0222.0009	AMP.5800.0222.0010	AMP.5800.0222.0011
AMP.5800.0222.0012	AMP.5800.0222.0013	AMP.5800.0222.0014	AMP.5800.0222.0016
AMP.5800.0235.0003	AMP.5800.0235.0006	AMP.5800.0175.0012	<u>AMP.5800.0237.0011</u>
<u>AMP.5800.0237.0012</u>	<u>AMP.5800.0237.0017</u>	<u>AMP.5800.0237.0018</u>	<u>AMP.5800.0237.0019</u>
<u>AMP.5800.0237.0020</u>	<u>AMP.5800.0246.0005</u>	<u>AMP.5800.0246.0006</u>	<u>AMP.5800.0246.0008</u>
<u>AMP.5800.0246.0009</u>	<u>AMP.5800.0277.0007</u>		
Settlement Deeds (as at 24 October 2022 6 October 2022 6 July 2022)			
AMP.5800.0203.0001	AMP.5800.0203.0002	AMP.5800.0006.0153	AMP.5800.0006.0280
<u>AMP.5800.0229.0001</u> <u>AMP.5800.0218.0003</u>	<u>AMP.5800.0240.0011</u>	<u>AMP.5800.0240.0013</u>	
<u>AMP.5800.0240.0014</u>	<u>AMP.5800.0237.0022</u>	<u>AMP.5800.0241.0001</u>	

Schedule 3 to the ~~Third Second~~ Further Amended Defence

The particulars for each of the sub-paragraphs of paragraph 100A4 of the ~~Third Second~~ Further Amended Defence (as at ~~24 October 2022~~ 6 October 2022 ~~6 July 2022~~) are set out in the table below.

Paragraph 100A4(a)	Paragraph 100A4 (b)	Paragraph 100A4 (c)	Paragraph 100A4 (d)	Paragraph 100A4 (e)	Paragraph 100A4 (f)	Paragraph 100A4 (g)	Paragraph 100A4 (h)
AMP.5800.0006.0004	AMP.5800.0006.0009	AMP.5800.0006.0094	AMP.5800.0006.0030	AMP.5800.0006.0028	AMP.5800.0203.0001	AMP.5800.0006.0280	AMP.5800.0006.0153
AMP.5800.0006.0012	AMP.5800.0006.0011	AMP.5800.0006.0154	AMP.5800.0006.0037	AMP.5800.0006.0034	AMP.5800.0203.0002	<u>AMP.5800.0229.0001</u>	
AMP.5800.0006.0016	AMP.5800.0006.0017	AMP.5800.0006.0152	AMP.5800.0006.0041	AMP.5800.0006.0042	<u>AMP.5800.0240.0011</u>	<u>AMP.5800.0218.0003</u>	
AMP.5800.0006.0020	AMP.5800.0006.0023	AMP.5800.0006.0154	AMP.5800.0006.0044	AMP.5800.0006.0048	<u>AMP.5800.0240.0014</u>		
AMP.5800.0006.0025	AMP.5800.0006.0173	AMP.5800.0006.0155	AMP.5800.0006.0051	AMP.5800.0006.0059	<u>AMP.5800.0240.0013</u>		
AMP.5800.0006.0088	AMP.5800.0006.0183	AMP.5800.0006.0156	AMP.5800.0006.0054	AMP.5800.0006.0062			
AMP.5800.0006.0089	AMP.5800.0006.0204	<u>AMP.5800.0240.0002</u>	AMP.5800.0006.0065	AMP.5800.0006.0064			
AMP.5800.0006.0090	AMP.5800.0006.0265	AMP.5800.0006.0157	AMP.5800.0006.0068	AMP.5800.0006.0071			
AMP.5800.0006.0091		<u>AMP.5800.0240.0009</u>	AMP.5800.0006.0070	AMP.5800.0006.0079			
AMP.5800.0006.0092		AMP.5800.0006.0158	AMP.5800.0006.0075	AMP.5800.0006.0082			

Paragraph 100A4(a)	Paragraph 100A4 (b)	Paragraph 100A4 (c)	Paragraph 100A4 (d)	Paragraph 100A4 (e)	Paragraph 100A4 (f)	Paragraph 100A4 (g)	Paragraph 100A4 (h)
AMP.5800.0006. 0093		AMP.5800.0006. 0178	AMP.5800.0006. 0078	AMP.5800.0006. 0084			
AMP.5800.0006. 0095		<u>AMP.5800.0240. 0008</u>	AMP.5800.0006. 0085	AMP.5800.0006. 0127			
AMP.5800.0006. 0101			AMP.5800.0006. 0119	AMP.5800.0006. 0140			
AMP.5800.0006. 0103			<u>AMP.5800.0237. 0014</u>	AMP.5800.0006. 0146			
AMP.5800.0006. 0104			AMP.5800.0006. 0124	AMP.5800.0006. 0149			
<u>AMP.5800.0277. 0004</u>			AMP.5800.0006. 0123	AMP.5800.0006. 0230			
AMP.5800.0204. 0001			AMP.5800.0006. 0129	AMP.5800.0006. 0244			
AMP.5800.0006. 0106			AMP.5800.0006. 0131	AMP.5800.0006. 0281			
AMP.5800.0006. 0107			AMP.5800.0006. 0133	AMP.5800.0206. 0003			
AMP.5800.0006. 0117			AMP.5800.0006. 0136	AMP.5800.0206. 0025			
AMP.5800.0006. 0200			AMP.5800.0006. 0138	AMP.5800.0206. 0027			
AMP.5800.0183. 0001			AMP.5800.0006. 0142	AMP.5800.0206. 0031			
AMP.5800.0006. 0252			AMP.5800.0006. 0143	AMP.5800.0206. 0032			
AMP.5800.0006. 0257			AMP.5800.0006. 0147	AMP.5800.0206. 0033			

Paragraph 100A4(a)	Paragraph 100A4 (b)	Paragraph 100A4 (c)	Paragraph 100A4 (d)	Paragraph 100A4 (e)	Paragraph 100A4 (f)	Paragraph 100A4 (g)	Paragraph 100A4 (h)
AMP.5800.0006. 0262			AMP.5800.0006. 0189	AMP.5800.0206. 0038			
AMP.5800.0205. 0001			AMP.5800.0006. 0206	AMP.5800.0206. 0040			
AMP.5800.0183. 0002			AMP.5800.0006. 0211	AMP.5800.0206. 0042			
<u>AMP.5800.0237. 0007</u>			AMP.5800.0006. 0213	AMP.5800.0206. 0044			
AMP.5800.0006. 0287			AMP.5800.0006. 0215	AMP.5800.0211. 0014			
AMP.5800.0006. 0288			AMP.5800.0006. 0217	AMP.5800.0211. 0035			
AMP.5800.0006. 0289			AMP.5800.0006. 0218	AMP.5800.0235. 0003			
AMP.5800.0006. 0290			AMP.5800.0006. 0220	<u>AMP.5800.0237. 0018</u>			
AMP.5800.0006. 0291			AMP.5800.0006. 0222				
AMP.5800.0006. 0292			AMP.5800.0006. 0225				
AMP.5800.0006. 0293			AMP.5800.0006. 0226				
AMP.5800.0006. 0294			AMP.5800.0006. 0233				
AMP.5800.0006. 0295			AMP.5800.0006. 0235				
AMP.5800.0172. 0001			AMP.5800.0006. 0237				

Paragraph 100A4(a)	Paragraph 100A4 (b)	Paragraph 100A4 (c)	Paragraph 100A4 (d)	Paragraph 100A4 (e)	Paragraph 100A4 (f)	Paragraph 100A4 (g)	Paragraph 100A4 (h)
AMP.5800.0175. 0002			AMP.5800.0006. 0239				
AMP.5800.0237. 0001			AMP.5800.0006. 0241				
AMP.5800.0175. 0004			AMP.5800.0006. 0243				
AMP.5800.0175. 0005			AMP.5800.0006. 0246				
AMP.5800.0175. 0006			AMP.5800.0006. 0249				
AMP.5800.0175. 0008			AMP.5800.0006. 0254				
AMP.5800.0175. 0009			AMP.5800.0006. 0260				
AMP.5800.0201. 0006			AMP.5800.0006. 0282				
AMP.5800.0201. 0009			AMP.5800.0006. 0283				
AMP.5800.0201. 0011			AMP.5800.0006. 0284				
AMP.5800.0201. 0012			AMP.5800.0006. 0285				
AMP.5800.0201. 0013			AMP.5800.0202. 0005				
AMP.5800.0201. 0014			AMP.5800.0202. 0006				
AMP.5800.0237. 0005			AMP.5800.0206. 0007				

Paragraph 100A4(a)	Paragraph 100A4 (b)	Paragraph 100A4 (c)	Paragraph 100A4 (d)	Paragraph 100A4 (e)	Paragraph 100A4 (f)	Paragraph 100A4 (g)	Paragraph 100A4 (h)
AMP.5800.0201. 0019			AMP.5800.0206. 0009				
AMP.5800.0201. 0002			AMP.5800.0206. 0013				
AMP.5800.0201. 0003			AMP.5800.0238. 0001				
AMP.5800.0213. 0004			AMP.5800.0206. 0016				
AMP.5800.0224. 0001			AMP.5800.0211. 0012				
AMP.5800.0224. 0002			AMP.5800.0211. 0013				
AMP.5800.0226. 0004			AMP.5800.0218. 0007				
AMP.5800.0226. 0006			AMP.5800.0218. 0010				
AMP.5800.0240. 0005			AMP.5800.0222. 0011				
AMP.5800.0226. 0021			AMP.5800.0222. 0012				
AMP.5800.0226. 0022			AMP.5800.0222. 0013				
AMP.5800.0225. 0002			AMP.5800.0222. 0014				
AMP.5800.0225. 0003			AMP.5800.0222. 0016				
AMP.5800.0006. 0295			AMP.5800.0235. 0006				

Paragraph 100A4(a)	Paragraph 100A4 (b)	Paragraph 100A4 (c)	Paragraph 100A4 (d)	Paragraph 100A4 (e)	Paragraph 100A4 (f)	Paragraph 100A4 (g)	Paragraph 100A4 (h)
<u>AMP.5800.0235.</u> <u>0026</u> <u>AMP.5800.0235.</u> <u>0030</u> <u>AMP.5800.0237.</u> <u>0008</u> <u>AMP.5800.0240.</u> <u>0001</u> <u>AMP.5800.0240.</u> <u>0007</u> <u>AMP.5800.0240.</u> <u>0010</u> <u>AMP.5800.0241.</u> <u>0002</u> <u>AMP.5800.0242.</u> <u>0001</u> <u>AMP.5800.0240.</u> <u>0004</u>			<u>AMP.5800.0237.</u> <u>0011</u> <u>AMP.5800.0237.</u> <u>0012</u> <u>AMP.5800.0237.</u> <u>0017</u> <u>AMP.5800.0237.</u> <u>0019</u> <u>AMP.5800.0237.</u> <u>0020</u> <u>AMP.5800.0246.</u> <u>0005</u> <u>AMP.5800.0246.</u> <u>0006</u> <u>AMP.5800.0246.</u> <u>0008</u> <u>AMP.5800.0246.</u> <u>0009</u> <u>AMP.5800.0277.</u> <u>0007</u>				