

# FEDERAL COURT OF AUSTRALIA

## Australian Securities and Investments Commission v NSG Services Pty Ltd, in the matter of NSG Services Pty Ltd [2017] FCA 345

File number: VID 585 of 2016

Judge: **MOSHINSKY J**

Date of judgment: 30 March 2017

Catchwords: **CORPORATIONS LAW** – financial advice – obligation to act in the best interests of the client – obligation only to provide advice to the client if it would be reasonable to conclude that the advice is appropriate to the client – where representatives failed to comply with ss 961B and 961G of the *Corporations Act 2001* (Cth) in relation to personal advice provided to retail clients – where defendant failed to take reasonable steps to ensure that representatives complied with ss 961B and 961G – admitted contraventions by defendant – application by the parties for the making of declarations by consent

Legislation: *Corporations Act 2001* (Cth), ss 761G, 910A, 911A, 911B, 912A, 961B, 961G, 961K, 961L, 1317E  
*Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* (Cth)

Cases cited: *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405  
*Australian Securities and Investments Commission v Newcrest Mining Ltd* (2014) 101 ACSR 46  
*Australian Securities and Investments Commission v Ostrava Equities Pty Ltd* [2016] FCA 1064  
*Avoca Consultants Pty Ltd v Millennium3 Financial Services Pty Ltd* (2009) 179 FCR 46  
*Panganiban v Australian Securities and Investments Commission* (2016) 338 ALR 119

Date of hearing: 30 March 2017

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Solicitor for the Plaintiff: Australian Securities and Investments Commission

Solicitor for the Defendant: Mr M Bland, Mills Oakley

# ORDERS

VID 585 of 2016

**IN THE MATTER OF NSG SERVICES PTY LTD (ACN 128 837 285)**

**BETWEEN:**                    **AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION**  
Plaintiff

**AND:**                         **NSG SERVICES PTY LTD (ACN 128 837 285)**  
Defendant

**JUDGE:**                     **MOSHINSKY J**

**DATE OF ORDER:**    **30 MARCH 2017**

## **THE COURT DECLARES THAT:**

### **Contravention of s 961K(2) of the *Corporations Act***

1. The defendant (**NSG**) contravened s 961K(2) of the *Corporations Act 2001* (Cth) (the **Act**) by reason of its representative, other than an authorised representative, Van Trinh (**Trinh**), contravening s 961B(1) of the Act in providing advice to Person A (as referred to in the Agreed Statement of Facts which is annexed to the reasons for judgment in this proceeding, dated 30 March 2017 (the **ASOF**)) at and following the client meeting of 19 July 2013.
2. NSG contravened s 961K(2) of the Act by reason of its representative, other than an authorised representative, Trinh, contravening s 961G of the Act in providing advice to Person A (as referred to in the ASOF) at and following the client meeting of 19 July 2013.
3. NSG contravened s 961K(2) of the Act by reason of its representative, other than an authorised representative, Mustafa Ozak (**Ozak**), contravening s 961B(1) of the Act in providing advice to Person B (as referred to in the ASOF) at and following the client meeting of 20 August 2015.
4. NSG contravened s 961K(2) of the Act by reason of its representative, other than an authorised representative, Ozak, contravening s 961G of the Act in providing advice to Person B (as referred to in the ASOF) at and following the client meeting of 20 August 2015.

**Contravention of s 961L of the *Corporations Act***

5. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Bilal El-Helou (**El-Helou**), complied with s 961B(1) of the Act in providing advice to Person C (as referred to in the ASOF) at and following the client meeting of 15 July 2014.
6. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961G of the Act in providing advice to Person C (as referred to in the ASOF) at and following the client meeting of 15 July 2014.
7. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961B(1) of the Act in providing advice to Person D (as referred to in the ASOF) at and following the client meeting of 20 August 2013.
8. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961G of the Act in providing advice to Person D (as referred to in the ASOF) at and following the client meeting of 20 August 2013.
9. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961B(1) of the Act in providing advice to Person E (as referred to in the ASOF) at and following the client meeting of 15 July 2013.
10. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961G of the Act in providing advice to Person E (as referred to in the ASOF) at and following the client meeting of 15 July 2013.
11. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Adrian Chenh (**Chenh**), complied with s 961B(1) of the Act in providing advice to Person F (as referred to in the ASOF) at and following the client meeting of 24 November 2014.
12. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Chenh, complied with s 961G of the Act in providing advice to

Person F (as referred to in the ASOF) at and following the client meeting of 24 November 2014.

13. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Chenh, complied with s 961B(1) of the Act in providing advice to Person G (as referred to in the ASOF) at and following the client meeting of 15 July 2014.
14. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Chenh, complied with s 961G of the Act in providing advice to Person G (as referred to in the ASOF) at and following the client meeting of 15 July 2014.
15. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Bevan Heneric (**Heneric**), complied with s 961B(1) of the Act in providing advice to Person H (as referred to in the ASOF) at and following the client meeting of 20 August 2013.
16. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Heneric, complied with s 961G of the Act in providing advice to Person H (as referred to in the ASOF) at and following the client meeting of 20 August 2013.
17. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Trinh, complied with s 961B(1) of the Act in providing advice to Person A (as referred to in the ASOF) at and following the client meeting of 19 July 2013.
18. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Trinh, complied with s 961G of the Act in providing advice to Person A (as referred to in the ASOF) at and following the client meeting of 19 July 2013.
19. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Ozak, complied with s 961B(1) of the Act in providing advice to Person B (as referred to in the ASOF) at and following the client meeting of 20 August 2015.
20. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Ozak, complied with s 961G of the Act in providing advice to

Person B (as referred to in the ASOF) at and following the client meeting of 20 August 2015.

**THE COURT ORDERS BY CONSENT THAT:**

1. By 4.00 pm on 5 May 2017, the plaintiff file and serve any evidence on which it intends to rely at the hearing on penalty.
2. By 4.00 pm on 2 June 2017, the defendant file and serve any evidence on which it intends to rely at the hearing on penalty.
3. By 4.00 pm on 16 June 2017, the plaintiff file and serve any submissions and evidence in reply on which it intends to rely at the hearing on penalty.
4. By 4.00 pm on 30 June 2017, the defendant file and serve any submissions on which it intends to rely at the hearing on penalty.
5. By 4.00 pm on 7 July 2017, the plaintiff file and serve any submissions in reply on which it intends to rely at the hearing on penalty.
6. The matter be listed for hearing on penalty on a date to be fixed after 7 July 2017, on an estimate of two days.
7. Costs be reserved.
8. Liberty to apply.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

## REASONS FOR JUDGMENT

### MOSHINSKY J:

- 1 NSG Services Pty Ltd (**NSG**) provides financial services advice and holds an Australian Financial Services Licence permitting it to advise retail clients about and deal in life risk insurance and superannuation products. NSG employs and engages persons to provide financial services advice on its behalf as its representatives, and its authorised representatives, within the meaning of the *Corporations Act 2001* (Cth) (the **Act**) (**NSG Representatives**).
- 2 By this proceeding, the Australian Securities and Investments Commission (**ASIC**) seeks declaratory and other relief against NSG in respect of NSG's contraventions of certain provisions in Div 2 of Part 7.7A of the Act. This division was introduced as part of the 'Future of Financial Advice Reforms' (**FOFA reforms**) by the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* (Cth). Compliance with the FOFA reforms was voluntary from 1 July 2012 and compulsory from 1 July 2013.
- 3 ASIC alleges that, on several occasions between 1 July 2013 and 20 August 2015 (the **relevant period**), certain NSG Representatives failed to comply with ss 961B and 961G of the Act in relation to personal advice provided to retail clients of NSG. ASIC also alleges that NSG failed to take reasonable steps to ensure that NSG Representatives complied with ss 961B and 961G of the Act, and NSG thereby contravened s 961L of the Act. ASIC further alleges that, in respect of breaches of ss 961B and 961G by NSG Representatives who were not authorised representatives, NSG breached s 961K of the Act.
- 4 Pursuant to s 1317E of the Act, ASIC seeks declarations that NSG has contravened:
  - (a) section 961K(2) of the Act, in respect of the contraventions by its representatives (other than authorised representatives) of ss 961B and 961G of the Act;
  - (b) section 961L of the Act, by failing to take reasonable steps to ensure that its representatives (including authorised representatives) complied with ss 961B and 961G of the Act.

5 Pursuant to s 1317G(1E) of the Act, ASIC seeks orders that NSG pay pecuniary penalties in respect of its contraventions of ss 961K(2) and 961L of the Act. ASIC also seeks its costs of the proceeding.

6 ASIC and NSG have reached an agreement in relation to the liability part of this proceeding. NSG accepts that it contravened the relevant provisions, and the parties have put forward agreed minutes of proposed declarations (**Minutes of Proposed Declarations**).

7 The parties have not reached any joint position with respect to the pecuniary penalties sought by ASIC or ASIC's costs of the proceeding. These matters will likely need to be resolved by way of a contested hearing at a later stage.

8 The parties have prepared an agreed statement of facts (**ASOF**) which provides the factual basis for the proposed declarations. A copy of the ASOF is annexed to these reasons. In the interests of the privacy of the clients of NSG referred to in the ASOF, I have substituted the letters A, B, C etc. for the names of the individuals in the copy of the ASOF annexed to these reasons. I am satisfied that the agreed facts and admissions are sufficient for the Court to determine the appropriate declarations to make in this proceeding, and provide a sound and proper basis for the making of those declarations: see *Australian Securities and Investments Commission v Newcrest Mining Ltd* (2014) 101 ACSR 46 at [10] per Middleton J and the cases there cited. For the sake of completeness, I note that it was common ground between the parties that, in the table set out in paragraph 19 of the ASOF, the numbers appearing in the second column (headed "Authorised representatives") and the third column (headed "Financial advisers") refer to the same individuals.

9 The parties have provided an outline of joint submissions in support of the proposed declarations. As indicated in that document, certain paragraphs of the 'joint submissions' are not, in fact, agreed to by NSG and represent submissions made by ASIC alone. In addition, each of ASIC and NSG has provided some additional submissions of their own. The separate submissions essentially go to issues of the proper construction of the Act, which do not affect the overall position that the parties are agreed that the relevant contraventions occurred and the proposed declarations should be made.

10 The parties made oral submissions today in support of the proposed declarations. For the reasons that follow, I am prepared to make declarations substantially in the terms of the Minutes of Proposed Declarations.



## Orders by Consent and Declarations

- 11 The applicable principles as regards the making of orders by agreement and as regards declarations are well established. They were summarised by Gordon J in *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 at [70]–[79] as follows:

### 2.3.1 Orders sought by agreement

...

- 70 The applicable principles are well established. First, there is a well-recognised public interest in the settlement of cases under the Act: *NW Frozen Foods Pty Ltd v Australian Competition & Consumer Commission* (1996) 71 FCR 285 at 291. Second, the orders proposed by agreement of the parties must be not contrary to the public interest and at least consistent with it: *Australian Competition & Consumer Commission v Real Estate Institute of Western Australia Inc* (1999) 161 ALR 79 at [18].
- 71 Third, when deciding whether to make orders that are consented to by the parties, the Court must be satisfied that it has the power to make the orders proposed and that the orders are appropriate: *Real Estate Institute* at [17] and [20] and *Australian Competition & Consumer Commission v Virgin Mobile Australia Pty Ltd (No 2)* [2002] FCA 1548 at [1]. Parties cannot by consent confer power to make orders that the Court otherwise lacks the power to make: *Thomson Australian Holdings Pty Ltd v Trade Practices Commission* (1981) 148 CLR 150 at 163.
- 72 Fourth, once the Court is satisfied that orders are within power and appropriate, it should exercise a degree of restraint when scrutinising the proposed settlement terms, particularly where both parties are legally represented and able to understand and evaluate the desirability of the settlement: *Australian Competition & Consumer Commission v Woolworths (South Australia) Pty Ltd (Trading as Mac's Liquor)* [2003] FCA 530 at [21]; *Australian Competition & Consumer Commission v Target Australia Pty Ltd* [2001] FCA 1326 at [24]; *Real Estate Institute* at [20]–[21]; *Australian Competition & Consumer Commission v Econovite Pty Ltd* [2003] FCA 964 at [11] and [22] and *Australian Competition & Consumer Commission v The Construction, Forestry, Mining and Energy Union* [2007] FCA 1370 at [4].
- 73 Finally, in deciding whether agreed orders conform with legal principle, the Court is entitled to treat the consent of Coles as an admission of all facts necessary or appropriate to the granting of the relief sought against it: *Thomson Australian Holdings* at 164.

### 2.3.2 Declarations

- 74 The Court has a wide discretionary power to make declarations under s 21 of the Federal Court Act: *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421 at 437–8; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 581–2 and *Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations Inc (No 2)* (1993) 41 FCR 89 at 99.
- 75 Where a declaration is sought with the consent of the parties, the Court's discretion is not supplanted, but nor will the Court refuse to give effect to

terms of settlement by refusing to make orders where they are within the Court's jurisdiction and are otherwise unobjectionable: see, for example, *Econovite* at [11].

76 However, before making declarations, three requirements should be satisfied:

- (1) The question must be a real and not a hypothetical or theoretical one;
- (2) The applicant must have a real interest in raising it; and
- (3) There must be a proper contradictor:

*Forster v Jododex* at 437–8.

77 In this proceeding, these requirements are satisfied. The proposed declarations relate to conduct that contravenes the ACL and the matters in issue have been identified and particularised by the parties with precision: *Australian Competition & Consumer Commission v MSY Technology Pty Ltd* (2012) 201 FCR 378 at [35]. The proposed declarations contain sufficient indication of how and why the relevant conduct is a contravention of the ACL: *BMW Australia Ltd v Australian Competition & Consumer Commission* [2004] FCAFC 167 at [35].

78 It is in the public interest for the ACCC to seek to have the declarations made and for the declarations to be made (see the factors outlined in *ACCC v CFMEU* at [6]). There is a significant legal controversy in this case which is being resolved. The ACCC, as a public regulator under the ACL, has a genuine interest in seeking the declaratory relief and Coles is a proper contradictor because it has contravened the ACL and is the subject of the declarations. Coles has an interest in opposing the making of them: *MSY Technology* at [30]. No less importantly, the declarations sought are appropriate because they serve to record the Court's disapproval of the contravening conduct, vindicate the ACCC's claim that Coles contravened the ACL, assist the ACCC to carry out the duties conferred upon it by the Act (including the ACL) in relation to other similar conduct, inform the public of the harm arising from Coles' contravening conduct and deter other corporations from contravening the ACL.

79 Finally, the facts and admissions in Annexure 1 provide a sufficient factual foundation for the making of the declarations: s 191 of the Evidence Act; *Australian Competition & Consumer Commission v Dataline.Net.Au Pty Ltd* (2006) 236 ALR 665 at [57]–[59] endorsed by the Full Court in *Australian Competition & Consumer Commission v Dataline.Net.Au Pty Ltd* (2007) 161 FCR 513 at [92]; *Hadgkiss v Aldin (No 2)* [2007] FCA 2069 at [21]–[22]; *Secretary, Department of Health & Ageing v Pagasa Australia Pty Ltd* [2008] FCA 1545 at [77]–[79] and *Ponzio v B & P Caelli Constructions Pty Ltd* (2007) 158 FCR 543.

12 In this proceeding, by parity of reasoning, the Court is entitled to treat the consent of NSG as an admission of all facts necessary or appropriate to the granting of the relief sought against it. Further, the three requirements for the making of declarations referred to by Gordon J are satisfied. The proposed declarations relate to conduct that contravenes the Act and the matters in issue have been identified and particularised by the parties with precision. The

proposed declarations contain sufficient indication of how and why the relevant conduct contravened the Act.

- 13 It is in the public interest for ASIC to seek to have the declarations made and for the declarations to be made. There is a significant legal controversy which is being resolved. ASIC, as the public regulator under the Act, has a genuine interest in seeking declaratory relief and NSG is a proper contradictor. Additionally, the declarations sought are appropriate because they serve to record the Court's disapproval of the contravening conduct, vindicate ASIC's claim that NSG contravened the Act, assist ASIC in carrying out its regulatory duties in the future, inform the public of the contravening conduct, and deter other corporations from contravening the Act.

### **Relevant legislative provisions**

- 14 In 2012, the Commonwealth Parliament introduced a new Part 7.7A to the Act as part of the FOFA reforms. The FOFA reforms represented the Government's response to the 2009 Inquiry into Financial Products and Services in Australia by the Parliamentary Joint Committee on Corporations and Financial Services that considered a variety of issues associated with corporate collapses, including of the Storm Financial and Opes Prime Groups: see the revised explanatory memorandum to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 (Cth), p 3. The FOFA provisions became law on 1 July 2012. Compliance was voluntary for the first year of operation, and compulsory from 1 July 2013.
- 15 By the insertion of Div 2 of Part 7.7A of the Act, the FOFA legislation introduced two key obligations in the provision of financial advice. First, s 961B of the Act imposed a new 'best interests' duty on providers in respect of personal financial advice provided to retail clients. Second, s 961G of the Act required providers to provide advice that is appropriate to the retail client. (There is a presumption in the Act that financial advice is provided to a retail client, subject to certain exceptions including where the value of the financial product to which the advice relates is at or over \$500,000: see s 761G and the associated regulations, which have the effect of defining "retail client" as a person who has invested in a financial product that is valued at less than \$500,000 on the advice of their licensed financial adviser. This threshold matter is satisfied here.)

16 A “provider” is the individual who provides the advice: ss 961(2) and (3). That is so even where the individual is a representative of a financial services licensee and is to provide the advice on behalf of the licensee: s 961(4).

17 Section 961B (headed “Provider must act in the best interests of client”) relevantly provides as follows:

- (1) The provider must act in the best interests of the client in relation to the advice.
- (2) The provider satisfies the duty in subsection (1), if the provider proves that the provider has done each of the following:
  - (a) identified the objectives, financial situation and needs of the client that were disclosed to the provider by the client through instructions;
  - (b) identified:
    - (i) the subject matter of the advice that has been sought by the client (whether explicitly or implicitly); and
    - (ii) the objectives, financial situation and needs of the client that would reasonably be considered as relevant to advice sought on that subject matter (the *client’s relevant circumstances*);
  - (c) where it was reasonably apparent that information relating to the client’s relevant circumstances was incomplete or inaccurate, made reasonable inquiries to obtain complete and accurate information;
  - (d) assessed whether the provider has the expertise required to provide the client advice on the subject matter sought and, if not, declined to provide the advice;
  - (e) if, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product:
    - (i) conducted a reasonable investigation into the financial products that might achieve those of the objectives and meet those of the needs of the client that would reasonably be considered as relevant to advice on that subject matter; and
    - (ii) assessed the information gathered in the investigation;
  - (f) based all judgements in advising the client on the client’s relevant circumstances;
  - (g) taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client’s relevant circumstances.

Note: The matters that must be proved under subsection (2) relate to the subject matter of the advice sought by the client and the circumstances of the client relevant to that subject matter (the client’s relevant circumstances). That subject matter and the client’s relevant circumstances may be broad or narrow, and so the subsection anticipates that a client may seek scaled advice and that the inquiries

made by the provider will be tailored to the advice sought.

The obligation imposed by s 961B(1) will be referred to as the **best interests duty** in these reasons. The expression “the best interests of the client”, which appears in s 961B(1), is not defined. Section 961B(2) may be treated as providing a ‘safe harbour’ for providers accused of breaching the best interests duty. If the provider can prove that he or she has done each of the seven things in s 961B(2), he or she will have satisfied the best interests duty.

18 There was, at least, a difference in emphasis between the parties as to the interaction between the primary provision, in s 961B(1), and the ‘safe harbour’ provision, in s 961B(2). However, ultimately, in the course of oral submissions, there did not appear to be any significant difference between the parties. It was accepted by ASIC that (as submitted by NSG) a person may be able to satisfy the best interests duty in s 961B(1) even though they do not fall within the ‘safe harbour’ of s 961B(2). The difference in emphasis was that ASIC contended that, in a “real world” practical sense, s 961B(2) was likely to cover all the ways of showing that a person had complied with s 961B(1) and, in this way, a failure to satisfy one or more of the limbs of s 961B(2) is highly relevant to the Court’s assessment of compliance with the best interests duty.

19 In summary form, for a provider to obtain the benefit of the ‘safe harbour’ provisions, it must prove that it has done each of the following:

- (a) identified the objectives, financial situation and needs of the client, as disclosed to the adviser through the client’s instructions;
- (b) identified the reason for the client seeking financial advice, and the client’s relevant circumstances;
- (c) made reasonable inquiries to obtain complete and accurate information where it was “reasonably apparent” that information about the client’s relevant circumstances was incomplete or inaccurate (see s 961C, which defines what is “reasonably apparent”);
- (d) declined to provide advice in the event that the adviser did not have the relevant expertise;
- (e) conducted a “reasonable investigation” into the financial products that might meet the needs and objectives of the client, and assessed the information gathered in the investigation (see s 961D, which describes what is a “reasonable investigation”);

- (f) based all judgments in advising the client on the client's relevant circumstances; and
- (g) taken any other steps that would "reasonably be regarded as being in the best interests of the client" given their circumstances. Section 961E amplifies the nature of that inquiry by stating that a matter would reasonably be regarded as in the best interests of the client if a person with a reasonable level of expertise in the subject matter of the advice sought, exercising care and objectively assessing the client's circumstances, would have regarded the step as such.

20 The obligation only to provide advice that is appropriate to the client is contained in s 961G, which assumes that, in preparing the advice, the adviser has complied with the best interests duty in s 961B(1) of the Act. Section 961G (headed "Resulting advice must be appropriate to the client") provides as follows:

The provider must only provide the advice to the client if it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the duty under section 961B to act in the best interests of the client.

Note: A responsible licensee or an authorised representative may contravene a civil penalty provision if a provider fails to comply with this section (see sections 961K and 961Q). The provider may be subject to a banning order (see section 920A).

The obligation imposed by s 961G will be referred to as the **appropriate advice duty** in these reasons.

21 It was common ground that, while s 961B is concerned with the process or procedure involved in providing advice that is in the best interests of the client, s 961G is concerned with the content or substance of that advice. At first blush, the text of s 961B does not appear to support the proposition that s 961B is concerned with the *process* or *procedure* involved in providing advice that is in the best interests of the client. However, support for this way of viewing the focus of s 961B is provided by the context in which it appears, including the language of s 961G, the legislative history, and the legislative materials (see, in particular, the revised explanatory memorandum to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 (Cth) at [1.23], [1.24], [1.57]). It is unnecessary for present purposes to reach a concluded view on this issue.

22 The nature of NSG's liability, as a financial services licensee, for the conduct of its representatives who contravene the best interests duty and the appropriate advice duty depends on whether or not the representative is an "authorised representative".

23 Under the system of licensing regulated by Part 7.6 of the Act, all persons carrying on a business of providing financial services, as defined, must hold an Australian Financial Services Licence. Licence holders can authorise representatives to provide financial services on behalf of the licensee, who are then exempted from the requirement of being licensed themselves: s 911A(2). Directors and employees of a licensed entity are “representatives” of a licensee and do not need to be appointed as authorised representatives: s 911B(1)(a). In this case, El-Helou, Chenh and Heneric were *authorised representatives* of NSG, and Trinh and Ozak were *representatives* of NSG (as employees of NSG: see the definition of a “representative” in s 910A).

24 Sections 961K and 961L of the Act provide for certain consequences for financial services licensees (as opposed to individual advisers) for contraventions by their representatives of, relevantly, ss 961B and 961G.

25 Section 961K(2) provides as follows:

A financial services licensee contravenes this section if:

- (a) a representative, other than an authorised representative, of the licensee contravenes section 961B, 961G, 961H or 961J; and
- (b) the licensee is the, or a, responsible licensee in relation to that contravention.

26 Under this provision, a licensee (such as NSG) will have contravened the Act if a representative, other than an authorised representative, contravenes s 961B or s 961G, and the licensee is the responsible licensee in relation to that contravention. However, there is no equivalent provision to s 961K that attributes liability to a licensee for the contraventions of its authorised representatives.

27 Section 961L (headed “Licensees must ensure compliance”) provides as follows:

A financial services licensee must take reasonable steps to ensure that representatives of the licensee comply with sections 961B, 961G, 961H and 961J.

28 Under this provision, a licensee (such as NSG) has a duty to take reasonable steps to ensure compliance by its representatives.

29 Pursuant to s 1317E of the Act, both s 961K and s 961L are civil penalty provisions.

30 There does not appear to have been any detailed judicial consideration of the provisions that are the subject of this proceeding. The relevant provisions were referred to, but not construed, in *Australian Securities and Investments Commission v Ostrava Equities Pty Ltd*

[2016] FCA 1064 at [28] and *Panganiban v Australian Securities and Investments Commission* (2016) 338 ALR 119 at [21].

31 The obligation in s 961L mirrors that in s 912A(1)(ca) of the Act, which requires a financial services licensee to “take reasonable steps to ensure that its representatives comply with the financial services laws”. Unlike s 961L, s 912A is not a civil penalty provision. In *Avoca Consultants Pty Ltd v Millennium3 Financial Services Pty Ltd* (2009) 179 FCR 46, Barker J held that the obligation of an AFSL holder to ensure that its representatives are adequately trained, per s 912A(1)(f), read in combination with the obligation in s 912A(1)(ca), and “the general objectives of Ch 7 of the [Act] ... the tightening of the law governing the provision of financial services, and the rigorous licensing system [in Chapter 7 of the Act] ... strongly suggests the holder of an AFSL should undertake a continuing training program that is calculated to produce competent representatives or maintain their level of competence”: at [342]–[346].

#### **Contraventions of s 961K(2) of the Act**

32 As noted above, liability under s 961K(2) of the Act is automatically imposed on NSG by reason of its representatives, other than authorised representatives, having contravened ss 961B and 961G of the Act.

33 Because Trinh and Ozak were at all relevant times employees of NSG, and not authorised representatives, NSG is liable for each of their contraventions of ss 961B and 961G of the Act. The facts set out in the ASOF establish the following contraventions of ss 961B and 961G by each of Trinh and Ozak, in respect of which NSG is liable:

- (a) Trinh contravened s 961B(1) in providing advice to Person A (as referred to in the ASOF) at and following the client meeting of 19 July 2013;
- (b) Trinh contravened s 961G in providing advice to Person A at and following the client meeting on 19 July 2013;
- (c) Ozak contravened s 961B(1) in providing advice to Person B (as referred to in the ASOF) at and following the client meeting of 20 August 2015; and
- (d) Ozak contravened s 961G in providing advice to Person B at and following the client meeting of 20 August 2015.

34 In light of the above, I am satisfied that NSG contravened s 961K(2) as set out in the first four proposed declarations, which are as follows:



1. The Defendant (**NSG**) contravened s 961K(2) of the *Corporations Act 2001* (Cth) (the **Act**) by reason of its representative, other than an authorised representative, Van Trinh (**Trinh**), contravening s 961B(1) of the Act in providing advice to [Person A] at and following the client meeting of 19 July 2013.
2. NSG contravened s 961K(2) of the Act by reason of its representative, other than an authorised representative, Trinh, contravening s 961G of the Act in providing advice to [Person A] at and following the client meeting of 19 July 2013.
3. NSG contravened s 961K(2) of the Act by reason of its representative, other than an authorised representative, Mustafa Ozak (**Ozak**), contravening s 961B(1) of the Act in providing advice to [Person B] at and following the client meeting of 20 August 2015.
4. NSG contravened s 961K(2) of the Act by reason of its representative, other than an authorised representative, Ozak, contravening s 961G of the Act in providing advice to [Person B] at and following the client meeting of 20 August 2015.

35 Accordingly, I will make declarations substantially in the terms of the first four proposed declarations.

#### **Contraventions of s 961L of the Act**

36 There was some difference between the parties, at least in their separate written submissions, as to the requirements necessary to establish a contravention of s 961L. On the one hand, ASIC submitted in its written submissions that NSG's liability for its contraventions of s 961L arises in this case because of:

- (a) contraventions of ss 961B and 961G by certain NSG Representatives;
- (b) a failure by NSG to take reasonable steps to prevent these contraventions; and
- (c) a causal nexus between the two.

37 On the other hand, NSG submitted that ASIC had read into s 961L elements that do not exist. NSG submitted that s 961L warrants consideration only of the reasonableness of the conduct (ie, the steps taken by) NSG. It submitted that, for the purposes of s 961L, it is neither necessary nor sufficient to show a contravention of another relevant provision (in this case, s 961B(1) or s 961G).

38 Ultimately, in oral submissions, ASIC submitted that it was not necessary for the Court to reach a concluded view on this issue (because the underlying contraventions of ss 961B and 961G by the representatives were admitted and there was a causal nexus between NSG's failure to take reasonable steps and those contraventions). ASIC also submitted that it did not

advocate a firm position on the point, but as a matter of practicality some form of causal nexus was likely to exist in most cases.

39 In my view, it is not necessary to resolve this point in this case. The facts set out in the ASOF establish the underlying contraventions of ss 961B and 961G by the NSG Representatives. They also demonstrate a causal relationship between the failure by NSG to take reasonable steps and the contraventions of ss 961B and 961G by the NSG Representatives.

40 I will now address the way in which NSG's failure to take reasonable steps is established by the ASOF.

41 NSG admits that it failed to take reasonable steps to ensure compliance by its representatives with their best interests duty and their appropriate advice duty by reason of the following practices and policies:

- (a) the new client advice process;
- (b) training of NSG Representatives;
- (c) NSG's systems for monitoring and supervising representatives;
- (d) external audits;
- (e) compliance policies; and
- (f) sales targets and remuneration.

42 An examination of each of these practices and policies demonstrates that, at all relevant times, NSG was aware of problems with the form and content of financial product advice provided by its representatives to retail clients. While NSG took some steps to address issues as they arose, NSG failed adequately to address the systemic problems with its practices and policies that enabled representatives to provide advice in contravention of the best interests duty and the appropriate advice duty. NSG obtained detailed advice from a number of external providers, but failed adequately to disseminate and implement that advice across the organisation.

43 NSG's relevant practices and policies are addressed below.

*New client advice process*

44 The agreed facts concerning NSG's new client advice process are set out in the ASOF at paragraphs 22-28.

45 The system at NSG for providing advice to new retail clients was designed to be completed quickly. Although new clients spoke with NSG staff over the telephone before meeting an adviser, the substantial majority of client instructions were provided at the sole meeting between the client and NSG representative. NSG provided its representatives with a detailed 'Client Fact Finder' form to assist with obtaining client instructions, but did not regularly check whether the Client Fact Finders were accurate, and NSG Representatives often completed forms after the client meeting in the absence of the client. NSG Representatives provided advice at the client meeting, and sought and obtained instructions to implement the advice at the same meeting.

46 Clients were given little or no time to reflect on the advice by NSG Representatives before agreeing to implement the recommendations and advice. NSG had no system in place to ensure that clients received and approved the content of a written statement of advice (SOA) prior to the implementation of the financial advice, or at all. In the case of each of the clients identified in the ASOF, NSG Representatives prepared SOAs after the sole client meeting, and after the client had agreed to implement the advice.

47 The result of this process meant that NSG Representatives were able to give financial product advice:

- (a) in the absence of proper, sufficient and complete instructions and information about the client's objectives, financial situation and needs;
- (b) without conducting research into appropriate financial products after the provision of complete instructions by the client;
- (c) without comparing the client's existing superannuation and life and risk insurance products with the client's stated objectives, and with the products recommended by NSG; and
- (d) prior to the preparation of a written SOA or the client receiving, and considering, the matters in a SOA.

#### *Training systems and practices*

48 The agreed facts concerning NSG's training systems and practices are set out in the ASOF at paragraphs 29-50.

49 Although NSG provided a considerable amount of training to its representatives, there was a lack of training about advisers' obligations under the Act. NSG conducted only three training

sessions on the implementation of the FOFA reforms within the relevant period, in March 2012, February 2014 and May 2015.

50 NSG provided trainee advisers with three months of full-time training to become NSG Representatives, and ongoing weekly training to all advisers. In both cases, the training was conducted internally, and was focused on client communication and sales effectiveness. Trainee advisers were not adequately trained by NSG on how to use the information they had gathered in order to provide appropriate financial advice within the meaning of the Act. Trainee and established advisers were not provided with training on the benefits and detriments of financial products offered by NSG, on the preparation of a SOA, or about their individual obligations as a result of the FOFA reforms.

51 The inadequacy of the training about NSG Representatives' individual obligations under the Act meant that they were not adequately made aware of their personal responsibility for compliance with the best interests duty, including the safe harbour provisions, the appropriate advice duty, or of the legal consequences of non-compliance.

*Systems for monitoring and supervision*

52 The agreed facts concerning NSG's systems for monitoring and supervision are set out in the ASOF at paragraphs 51-64.

53 NSG did not conduct regular or substantive performance reviews of its representatives, and did not conduct regular internal audits of the advice provided by representatives, or check that advice was provided in compliance with the obligations in Div 2 of Part 7.7A of the Act. Although NSG had a formal policy concerning the supervision of representatives, it did not exist until 14 February 2014, and was not followed insofar as the policy required NSG to undertake quarterly performance reviews of representatives.

54 NSG did conduct internal audits of some of its representatives, including El-Helou, during the relevant period. These audits revealed that El-Helou had been failing to obtain complete instructions from clients about their objectives, financial situation and needs; and failing to provide appropriate advice to NSG clients. However, El-Helou was not adequately sanctioned for these matters, and NSG did not interrogate its systems, policies and practices to ascertain if there were deficiencies in those processes that enabled advisers to avoid compliance with their regulatory obligations. NSG's knowledge of these matters, and its failure to ensure that its systems, policies and practices were not enabling the contravention

by NSG Representatives of their obligations under the Act, meant that it contravened s 961L of the Act.

*External audits*

55 The agreed facts about the external audits and reviews at NSG are set out in the ASOF at paragraphs 65-92.

56 NSG engaged third parties to conduct reviews and audits of NSG and its representatives in 2012 (twice), 2013, and 2015. Further, ASIC conducted a review of NSG in 2013. The external reviews and audits examined client files of NSG to ascertain whether financial advice was being provided in compliance with the provisions of the Act, as well as NSG's own approach to compliance. Although the two reviews conducted by Jigsaw in 2012 were conducted before the FOFA reforms had been implemented, the findings from those reviews were consistent with findings by Ashurst in 2013 and Assured Support in 2015.

57 Each of the five external reviews identified various unsatisfactory acts and omissions of NSG Representatives in providing advice, and potential breaches of NSG's and NSG Representatives' obligations under the Act. The unsatisfactory acts and omissions related to, relevantly, obtaining instructions from clients; the provision of advice; and the preparation of SOAs.

58 The external reviews identified that NSG Representatives were providing advice on the same day as the client meetings, before a written SOA was provided to the client, and before the representative had conducted an adequate assessment of the client's existing financial products and his or her financial objectives, situation and needs. NSG received advice from Ashurst in 2013 and 2014 recommending that it inform its representatives of the best interests obligation, and require its advisers to complete a checklist of matters relevant to the performance of that obligation. However, NSG did not distribute the Ashurst advice or incorporate the recommendations into its systems and processes. The advice provided by Ashurst about NSG's compliance framework was not followed or implemented by NSG.

59 The matters raised by NSG's external advisers between 2012 and 2014 consistently referred to NSG Representatives' failure to give appropriate advice and act in the best interests of the client, in particular by providing hastily prepared, incomplete, and proforma advice to clients. NSG was thus aware of these matters. This knowledge, coupled with NSG's failure to take adequate responsive steps to ensure that its systems, policies and practices were not

contributing to the contraventions by NSG Representatives of their obligations under the Act, meant that NSG contravened s 961L of the Act.

*Compliance policies*

60 The agreed facts about NSG's compliance policies, and its breaches and compliance registers, are set out in the ASOF at paragraphs 93-117.

61 During the relevant period, NSG did not have any policy which addressed the NSG Representatives' statutory duties and requirements under Div 2 of Part 7.7A, or any other provisions, of the Act.

62 While NSG had a number of written policies relating to legal and regulatory compliance and risk management, the policies were inadequate and, in many cases, not followed or enforced by NSG. This failure meant that NSG did not have an adequate system in place to monitor compliance by its representatives with their statutory obligations, and accordingly, was not able to and did not identify systemic problems with its policies and seek to remedy those problems.

63 The policy at NSG governing the production of SOAs required NSG Representatives to ensure that SOAs were signed by the client prior to the adviser commencing to apply for the financial products selected by the client. NSG was aware, from internal and external audits of client files, that SOAs were prepared after the provision and implementation of advice as a matter of course. In the case of each of the clients identified in these proceedings, SOAs were not provided and were not signed off before the implementation of advice.

64 The policies at NSG governing communication with clients required NSG Representatives to inform clients in the event that an insurance company offered insurance on revised terms to those originally suggested by the adviser. NSG received a number of complaints regarding the failure by representatives to inform clients of revised terms.

65 Policies regarding conflicts of interest and compliance (which required NSG to survey clients after appointments with NSG and again after advice was implemented, as well as to review SOAs) were drafted in 2011, and not updated following the commencement of the FOFA reforms until, in the case of the compliance policy, November 2015. NSG did not routinely and in each case survey clients after their appointments with NSG Representatives, or after the implementation of advice.

66 NSG maintained a register for recording breaches by its representatives of NSG's and individual representatives' statutory obligations, but regularly failed to record instances of conduct that may have constituted a breach. This failure meant that NSG was not able to properly monitor the actions of its representatives to ensure that they were acting in compliance with their own, and NSG's, statutory obligations.

67 Further, between May and December 2013, ASIC conducted an audit of a number of NSG client files and found the majority (10 out of 11 audited) contained inappropriate advice. NSG notified ASIC that it would lodge breach notifications with ASIC in respect of its defective SOA template, and in respect of defective SOAs provided to at least four clients. It did not do so. Nor did it record those breaches on its breaches register.

68 NSG maintained a complaints register for recording complaints by clients against NSG Representatives. Both before and during the relevant period, the complaints recorded on the register demonstrated conduct by NSG Representatives that was consistent with the findings of the external auditors and reviewers, referred to above. Further, the complaints register was not a complete record of all those complaints made in respect of NSG Representatives. For example, NSG failed to record those complaints against El-Helou that it identified in the internal review described at [54] above.

69 NSG was aware of the deficiencies in compliance with its policies, and in certain cases in the policies themselves. NSG was aware of the matters recorded on the breaches and complaints registers, and the deficiencies of those registers. This knowledge, coupled with NSG's failure to ensure that its systems, policies and practices were not contributing to the contraventions by NSG Representatives of their obligations under the Act, meant that NSG contravened s 961L of the Act.

#### *Remuneration and sales targets*

70 The agreed facts about the remuneration and sales targets for NSG Representatives are set out in the ASOF at paragraphs 118-122.

71 Prior to the commencement of certain of the FOFA reforms on 1 July 2013, NSG Representatives were remunerated entirely by commission on sales for superannuation rollovers and life risk insurance.

72 Although NSG introduced a base salary and performance-based bonus remuneration structure after 1 July 2013, some NSG Representatives were still paid only by way of commission.

73 The commission-based salary structures created an incentive for representatives to emphasise sales imperatives over compliance requirements and a culture in which the best interests and appropriate advice duties were more likely to be overlooked.

74 All NSG Representatives were required to meet weekly sales targets, and attended weekly sales meetings at which each representative's sales from the previous week were published and the sales performance of each representative was discussed.

*Conclusion relating to s 961L*

75 In light of the above, I am satisfied that NSG contravened s 961L as set out in proposed declarations 5 to 20, which are as follows:

5. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Bilal El-Helou (**El-Helou**), complied with s 961B(1) of the Act in providing advice to [Person C] at and following the client meeting of 15 July 2014.
6. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961G of the Act in providing advice to [Person C] at and following the client meeting of 15 July 2014.
7. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961B(1) of the Act in providing advice to [Person D] at and following the client meeting of 20 August 2013.
8. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961G of the Act in providing advice to [Person D] at and following the client meeting of 20 August 2013.
9. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961B(1) of the Act in providing advice to [Person E] at and following the client meeting of 15 July 2013.
10. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, El-Helou, complied with s 961G of the Act in providing advice to [Person E] at and following the client meeting of 15 July 2013.
11. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Adrian Chenh (**Chenh**), complied with s 961B(1) of the Act in providing advice to [Person F] at and following the client meeting of 24 November 2014.
12. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Chenh, complied with s 961G of the Act in providing advice to [Person F] at and following the client meeting of 24 November 2014.



13. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Chenh, complied with s 961B(1) of the Act in providing advice to [Person G] at and following the client meeting of 15 July 2014.
14. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Chenh, complied with s 961G of the Act in providing advice to [Person G] at and following the client meeting of 15 July 2014.
15. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Bevan Heneric (**Heneric**), complied with s 961B(1) of the Act in providing advice to [Person H] at and following the client meeting of 20 August 2013.
16. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Heneric, complied with s 961G of the Act in providing advice to [Person H] at and following the client meeting of 20 August 2013.
17. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Trinh, complied with s 961B(1) of the Act in providing advice to [Person A] at and following the client meeting of 19 July 2013.
18. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Trinh, complied with s 961G of the Act in providing advice to [Person A] at and following the client meeting of 19 July 2013.
19. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Ozak, complied with s 961B(1) of the Act in providing advice to [Person B] at and following the client meeting of 20 August 2015.
20. NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that its representative, Ozak, complied with s 961G of the Act in providing advice to [Person B] at and following the client meeting of 20 August 2015.

76 Accordingly, I will make declarations substantially in these terms.

I certify that the preceding seventy-six (76) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Moshinsky.

Associate:

A handwritten signature in black ink, appearing to read 'J. Moshinsky', followed by a horizontal line extending to the right.

Dated: 30 March 2017

**APPENDIX**  
**AGREED STATEMENT OF FACTS**

**(Footnotes omitted)**

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## I INTRODUCTION

1. The Plaintiff, the Australian Securities and Investments Commission (**ASIC**), and the Defendant, NSG Services Pty Ltd (**NSG**), agree to the facts set out below in this Agreed Statement of Facts (**ASOF**) for the purposes of s 191 of the *Evidence Act 1995* (Cth).
2. The facts agreed to and the admissions made in this document are for the purpose of this proceeding only and do not constitute any agreed fact or admission external to this proceeding.
3. NSG has agreed to declarations being made against it in relation to all allegations made by ASIC in this proceeding.
4. This ASOF is made in support of the accompanying minutes of orders for proposed declaratory relief.

## II THE PARTIES

5. ASIC:
  - (a) is a body corporate pursuant to s 8 of the *Australian Securities and Investments Commission Act 2001* (Cth); and
  - (b) may apply to the Court for a declaration of contravention and a pecuniary penalty order under the *Corporations Act 2001* (Cth) (**Act**), pursuant to s 1317J(1) of the Act.
6. NSG:
  - (a) is incorporated pursuant to the Act;
  - (b) carries on business as a provider of financial services;
  - (c) holds Australian Financial Services Licence (**AFSL**) number 321191 permitting it to, among other activities, advise retail clients about and deal in life risk insurance and superannuation products;
  - (d) from time to time since 1 July 2013 has employed and contracted persons to provide financial product advice, as its authorised representatives within the meaning of the Act and representatives other than authorised representatives, on its behalf (**NSG Representatives**), including:
    - (i) Bilal El-Helou (**El-Helou**);
    - (ii) Adrian Chenh (**Chenh**);
    - (iii) Bevan Heneric (**Heneric**);
    - (iv) Van Trinh (**Trinh**); and
    - (v) Mustafa Ozak (**Ozak**).
7. At all material times:
  - (a) El-Helou, Chenh and Heneric were each an authorised representative of NSG as defined in s 961A of the Act; and
  - (b) Trinh and Ozak were each a representative of NSG other than an authorised representative.

### **III BACKGROUND TO THE PROCEEDING**

#### **(a) Structure of NSG**

8. NSG is a Melbourne-based proprietary limited company that has operated since 1997.
9. At all relevant times, the NSG business has been divided into a number of separate divisions:
  - (a) Reception, human resources and office management (Division 1);
  - (b) Client services for existing clients, client reviews and claims handling (Division 2);
  - (c) Accounts payable and receivable (Division 3);
  - (d) Product lodgement and administration (Division 4);
  - (e) Quality control and compliance of advice (Division 5);
  - (f) New client engagement and advice, verification of advice and pre-production audit (Division 6); and
  - (g) Executive management (Division 7).
10. Division 6 advisers are responsible for servicing new clients.
11. Division 2 advisers service the existing NSG client base, which includes reviewing, increasing and rewriting existing business. A client will become a Division 2 client after their initial financial plan and products are implemented.
12. As at 1 July 2013 until May 2014, NSG had the following management structure:
  - (a) Executive Director;
  - (b) Production Executive Secretary;
  - (c) Production Manager;
  - (d) Quality Control Manager; and
  - (e) Authorised Representative Manager.
13. Between May 2014 and up until at least 20 August 2015 (the end of the relevant period as defined at paragraph 22 below), NSG had the following management structure:
  - (a) Executive Director;
  - (b) Operations Manager;
  - (c) Office Manager/Human Resources;
  - (d) Client Service Manager;
  - (e) Production Manager;
  - (f) Quality Control Officer;

- (g) Accounts Manager; and
  - (h) Course Room Supervisor.
14. The following persons were designated by NSG as Responsible Persons under its AFSL:
- (a) from 2 April 2008 to 20 December 2012, Sean Santoro;
  - (b) from 20 December 2012 to 2 February 2015, Ari Papapavlou; and
  - (c) from 20 December 2012 to the current date, Brian Sayers.
15. At all material times, Tony Tzouvelis has been and continues to be the sole director and sole secretary of NSG.
16. The role of Operations Manager, held by Chrystal Evans since at least May 2014, encompasses the role of Compliance Manager. This role oversees the daily operations of Divisions 3, 4, 5 and 6.

**(b) Client base**

17. At all times during the relevant period, NSG had various referral arrangements in place with a number of accounting businesses.
18. NSG's client base is, and at all times during the relevant period has been, predominantly comprised of investors who receive personal financial advice as retail clients.

**(c) Size of NSG**

19. Between 30 June 2013 and 30 June 2016, NSG has had the following numbers of authorised representatives and financial advisers:

<b>Financial year ending</b>	<b>Authorised representatives</b>	<b>Financial advisers</b>
30 June 2013	16	16
30 June 2014	14	14
30 June 2015	6	6
30 June 2016	2	2

20. As at the date of this ASOF, NSG employs or engages two people that are authorised representatives and financial advisers.
21. NSG has filed with ASIC annual AFSL holder profit and loss statements and balance sheets (Form FS70) that set out the net revenue and asset position of the NSG Services Unit Trust and Associated Entity between 30 June 2008 and 30 June 2016 as follows:

<b>Financial year ending</b>	<b>Revenue from Commissions</b>	<b>Net asset position</b>
30 June 2008	\$23,704	\$10.00
30 June 2009	\$1,465,878	\$10.00
30 June 2010	\$2,039,934	\$10.00
30 June 2011	\$3,228,078	(\$1,642)
30 June 2012	\$4,557,752	(\$1,640)
30 June 2013	\$6,451,121	\$1,013.00
30 June 2014	\$8,235,937	\$3,069,568

30 June 2015	\$7,542,301	\$3,071,515
30 June 2016	\$4,655,103	\$3,073,646

#### IV FACTORS RELEVANT TO CONTRAVENTION BY NSG OF SECTION 961L OF THE ACT

##### (a) NSG's New Client Advice Process

22. In the period between around 1 July 2013 and 20 August 2015 (**the relevant period**), the usual process and practice at NSG for receiving instructions from and giving advice to new retail clients with respect to life risk insurance and superannuation products (**new client advice process**) included the matters in the paragraphs that follow.
23. An NSG administrative employee contacted a prospective client by telephone to offer them free financial planning advice and to arrange a meeting with an NSG Representative.
24. During the initial telephone call with the prospective client, an NSG administrative employee and/or an NSG Representative asked the prospective client general information about their personal and financial circumstances in order to "qualify" the prospective client to determine whether it would be worthwhile for them to receive advice in relation to financial products from an NSG Representative.
25. If a prospective client agreed to a meeting during the initial telephone call, then an NSG Representative met with the client in person, usually at the client's home, on one occasion.
26. Prior to the meeting, no one at NSG collected specific information or conducted specific research with respect to the client's financial situation, needs or objectives.
27. At the meeting, the NSG Representative:
  - (a) took and recorded instructions from the client, ordinarily by partially completing a document entitled 'Client Fact Finder';
  - (b) made, or was provided with, copies of the client's recent superannuation statements and/or insurance documents, if available, as well as, at times, the client's driver's licence or other form of identification;
  - (c) orally gave the client financial advice and recommended one or more life risk insurance and/or superannuation products to the client;
  - (d) did not discuss alternative life risk insurance and/or superannuation products, provide any comparisons between alternative products, or provide any comparison between the client's existing products and any recommended product(s);
  - (e) arranged for the client to sign incomplete forms and documents, including a Client Fact Finder and application forms for the recommended products, and an authority to proceed.

28. Following the meeting:
- (a) the NSG Representative at times completed, or caused to be completed, documents including application forms for the recommended products, an authority to proceed, and the Client Fact Finder;
  - (b) where two witnesses to a client's signature were required in an application form for the recommended product, the NSG Representative at times arranged for another NSG employee to sign the form as the second witness despite that person not having seen the client;
  - (c) the NSG Representative obtained quotes and/or product information for the recommended products where it had not been done prior to the meeting;
  - (d) the NSG Representative submitted the documents referred to in subparagraphs (a) and (c) above to an internal verifications department, known as the Production Department, for review, processing the product applications and arranging for the implementation of the NSG Representative's advice with respect to the products recommended to the client;
  - (e) up to around 2014, the NSG Representative prepared a written statement of advice (SOA) for the client;
  - (f) from about 2014, the NSG Representative submitted the completed Client Fact Finder, notes and quotes to an internal SOA paraplanner at NSG, who then prepared the SOA;
  - (g) there were no checks at NSG to ensure the client received the SOA prior to the implementation of the recommended products, or at all; and
  - (h) an NSG Representative contacted the client after the advice was provided and instructions implemented (if applicable) to conduct a client satisfaction survey.

**(b) NSG's Training Systems and Practices**

Initial training

- 29. At all material times, NSG provided trainee advisers, upon the commencement of their engagement by NSG, with three months of full-time training to become an NSG Representative (**the initial training**).
- 30. Trainee advisers undertaking the initial training included people who had not previously worked in financial services.
- 31. The initial training was conducted internally by NSG staff.
- 32. The initial training comprised several courses, including a Communications Course, a Fact Finder Course and a Tone Scale Course.
- 33. The Communications Course was aimed at teaching trainee advisers how to communicate with clients.
- 34. As part of the Communications Course trainee advisers were required to

work through 'Training Routines', known as 'TRs', which involved a lot of time spent doing role plays with other advisers.

35. The Fact Finder Course focused on the process of obtaining instructions from clients using NSG's Client Fact Finder template document.
36. During the Fact Finder Course, trainee advisers were required to:
  - (a) learn a script for the fact-finding process, which script was contained in the Fact Finder document; and
  - (b) watch a DVD of an adviser role-playing an interview with a client using the Fact Finder document.
37. Part of the Fact Finder Course was focused on communicating with clients effectively, including by:
  - (a) learning to handle client "objections" to giving particular information or talking about particular topics; and
  - (b) practising using the script for the fact-finding process in the Fact Finder document through role-plays, which were often video-taped and then shown to trainee advisers.
38. During the Fact Finder Course, trainee advisers were not trained by NSG how to use the information they had gathered in order to provide appropriate financial advice within the meaning of the Act, or at all.
39. The Tone Scale Course focused on learning to identify and match clients' "emotional tones".
40. As part of the initial training, trainee advisers were required to read a number of books and materials about selling products.
41. The initial training did not include any training on:
  - (a) the financial products in respect of which NSG provided financial advice; or
  - (b) preparing and providing clients with a SOA; or
  - (c) the substance of any legal obligations imposed on NSG Representatives with respect to the provision of advice to clients, including obligations imposed by the Future of Financial Services (FOFA) provisions of the Act.

#### **Internal training of NSG Representatives**

42. At all material times, NSG held weekly training sessions for NSG Representatives (**the weekly training**).
43. The weekly training usually involved advisers reading books, memorising scripts from the Client Fact Finder document and doing role plays with other advisers.
44. The weekly training did not include any training on:
  - (a) the financial products offered by NSG; or
  - (b) preparing and providing clients with a SOA; or



- (c) the substance of any legal obligations imposed on NSG Representatives with respect to the provision of advice to clients, including obligations imposed by the FOFA provisions of the Act.
45. At all material times, NSG trained and instructed NSG Representatives that it is almost always in the client's best interests to take out some form of life risk insurance.

External training of NSG Representatives

46. NSG conducted three external sessions directly on the implementation of the FOFA provisions of the Act, being:
- (a) a training session provided by a company called Jigsaw Support Services Limited on 16 March 2012;
  - (b) a training session provided by Mills Oakley Lawyers on 13 February 2014; and
  - (c) a training session provided by a company called Assured Support Pty Ltd on 20 May 2015,
- but did not provide any other external training to trainee advisers or NSG Representatives directly on their FOFA obligations.

Monitoring of training by NSG

47. At all material times, NSG did not routinely monitor whether individual NSG Representatives had attended specific internal or external training sessions offered by NSG.
48. Further, at all material times, NSG did not follow ASIC Regulatory Guide 146 and identify deficiencies in the knowledge or skills of individual NSG Representatives in relation to the regulatory requirements to which they were subject, including their FOFA obligations.
49. At all material times, NSG did not follow ASIC Regulatory Guide 146 and establish annual training plans for each NSG Representative which addressed the following steps:
- (a) assessed the NSG Representative's training needs in relation to training standards;
  - (b) identified the NSG Representative's gaps or weaknesses in the preceding year and the areas where training will be focused;
  - (c) set objectives to be met;
  - (d) determined the structure of the continuing training program;
  - (e) assessed whether the NSG Representative had met the objectives of the training program; and
  - (f) provided feedback sessions with the NSG Representative about their performance.
50. Further, during the relevant period, NSG did not follow ASIC Regulatory Guide 146 and:
- (a) keep complete records of each NSG Representative's training plan;

or

- (b) keep evidence of all NSG Representatives' continuing training, such as receipts, enrolment records, attendance lists and daily diary notes.

**(c) NSG's systems for monitoring and supervision of NSG Representatives**

- 51. During the relevant period, NSG did not conduct regular or substantive performance reviews of NSG Representatives.
- 52. During the relevant period, NSG did not conduct regular internal audits or compliance checks on financial advice provided by NSG Representatives.

Monitoring and supervision policy

- 53. From around 14 February 2014, NSG had a policy entitled 'Monitoring and Supervision Policy & Procedures' (**Supervision Policy**), which stated that:
  - (a) the purpose of the policy was to outline NSG's "monitoring and supervision framework to monitor the activities of its representatives and ensure compliance with the financial services laws";
  - (b) NSG is "committed to reviewing its Representatives performance on a quarterly basis"; and
  - (c) each representative's compliance with NSG's obligations under its AFSL would be a criterion against which representatives were assessed.
- 54. NSG did not review NSG Representatives' performance on a quarterly basis or any other regular basis.
- 55. The Supervision Policy was not in place at the time of the effective date of Division 2 of Part 7.7A of the Act on 1 July 2013; it was put in place on or about 14 February 2014.

Internal investigation of advisers

- 56. In September 2013, NSG conducted an internal audit of El-Helou and five of his client files (**the El-Helou audit**).
- 57. The El-Helou audit found that:
  - (a) all client fact finders were relatively similar in regards to content, with all recording the same or similar responses from clients for risk analysis and the insurance questions;
  - (b) all fact finders were missing budget information and full information on assets and liabilities;
  - (c) insufficient data had been collected on the clients' relevant personal circumstances to support the recommendation of insurance through superannuation;
  - (d) no information was included about clients' existing products;
  - (e) there were no records of conversations found for any client;
  - (f) in all instances, El Helou had recommended insurance through superannuation but it was unclear whether the advice to the clients

was “completely appropriate”, as insufficient information about the client’s personal financial commitment made it impossible to determine whether insurance outside of superannuation may have been appropriate;

- (g) El-Helou was not on a training schedule and no CPD points had been recorded for two years; and
- (h) El-Helou had recently been the subject of two ethics reports in relation to complaints from clients regarding nondisclosure of medical conditions in applications for income protection insurance, being:
  - (i) a complaint from Wendy White for whom El-Helou had arranged to purchase income protection insurance in 2011 and subsequently, in 2013, had her claim denied on the basis of non-disclosure of a pre-existing condition; and
  - (ii) a complaint from Shannon Berriman who stated he was told by El-Helou not to disclose his diabetes as a pre-existing condition on his application form for income protection insurance,

**(Ethics Reports).**

- 58. In respect of the incident referred to at paragraph 57(h)(ii) above, NSG received an internal report from the NSG Production Manager, Robert Fowler, dated 9 May 2013 about the incident which stated “I do verify pretty much all of the insurances each week and I am quite alarmed by the high rate of standard client’s [sic] Bill has. This incident has raised questions to me and I am now starting to doubt the validity of his other sales.”
- 59. Following the El-Helou audit NSG:
  - (a) required El-Helou to re-read sections of ASIC’s Regulatory Guide 146;
  - (b) required El-Helou to re-do sections of the internal NSG fact-finder course; and
  - (c) did not require El-Helou to undergo any further external training.
- 60. Further, following the El-Helou audit NSG:
  - (a) did not investigate how the client files that were the subject of the El-Helou audit had passed through the Verifications and Quality Control processes of NSG; and
  - (a) did not conduct an internal audit of any other NSG Representative to ascertain if similar conduct had been or was being engaged in by other NSG Representatives.

Other matters

- 61. In around January 2015, NSG introduced a new client survey which required NSG staff to telephone clients and, among other matters, check that the completed Client Fact Finder accurately reflected the client’s personal financial circumstances as disclosed to the NSG Representative who acted as their adviser (**NSG quality control survey**).

62. El-Helou and Chenh informed Chrystal Evans that they did not wish their clients to participate in the NSG quality control survey.
63. For a period of time, NSG permitted El-Helou and Chenh to conduct the NSG quality control surveys of their own clients on the conditions that the calls be recorded, the surveys be reviewed by NSG staff and all surveys be conducted within 48 hours of the client's application being lodged.
64. After a short trial period El-Helou and Chenh agreed to NSG staff conducting the NSG quality control survey of their clients.

**(d) External Reviews and Audits**

**First Jigsaw Review – February 2012**

65. In February 2012, Jigsaw Support Services undertook an external review of five advisers, Brian Sayers, Damian Espinosa, Thomas Maloney, Bilal El-Helou and Sean Santoro, by reviewing three of each adviser's client files (**the Jigsaw Review**).
66. The Jigsaw Review identified the following issues with the client files of each adviser reviewed:
  - (a) client questionnaires were incomplete;
  - (b) the files did not contain evidence of an investigation into a range of strategies and products;
  - (c) the files did not contain evidence that a comparison of existing products or insurance had been completed;
  - (d) there was no evidence that an insurance needs analysis, and/or an analysis of the level or type of cover recommended, had been completed for the client;
  - (e) where limited advice was provided, there were inadequate file notes confirming the client's understanding about the limited nature of the advice to be provided; and
  - (f) there were no or inadequate file notes from discussions and meetings with the client that would support the advice.
67. The Jigsaw Review identified the following issues with the SOAs prepared by each adviser reviewed:
  - (a) the SOAs did not detail the clients' goals and objectives;
  - (b) the SOAs did not contain a discussion of a range of strategies and products;
  - (c) the SOAs did not contain a comparison of existing products and the recommended replacement product;
  - (d) the reasons for the strategy and product recommendations were not clear, and SOAs did not show how the recommended strategy would assist the client to meet his or her goals and objectives;
  - (e) the level of insurance coverage taken out by the adviser on behalf of the client was significantly different to the level recommended by the adviser, without explanation;

- (f) the information in the client questionnaire and the SOA was inconsistent and there was no explanation for the inconsistency; and
  - (g) the fee disclosure was incomplete.
68. Further, in respect of individual advisers, the Jigsaw Review identified the following issues:
- (a) for El-Helou, Jigsaw identified concerns with the dates of the various documents, with the authorities to proceed signed on the same day as the fact finders, and the SOAs dated two weeks later, and noted that “these issues were discussed with Chrystal [Evans] as she will need to initiate the internal reporting process to determine if any breaches have been identified”;
  - (b) for Santoro, Jigsaw identified that the client questionnaire, SOA and authority to proceed were all signed on the same day; and
  - (c) for Sayers and Espinosa, Jigsaw concluded that if there was a complaint of inappropriate advice for any of their files, and for Santoro for one of his files, the adviser would have difficulty defending the case.
69. Further, each adviser whose files were the subject of the Jigsaw Review was provided with a questionnaire designed to test the knowledge of the adviser in the areas of legislative knowledge, knowledge of advice procedures, and technical knowledge, but no adviser completed the questionnaire.
70. At the time of the Jigsaw Review, and during the relevant time, NSG knew each of the matters set out in paragraphs 66 to 69 above.

Second Jigsaw Review – May 2012

71. In May 2012, Jigsaw conducted a compliance review of NSG’s AFSL (**the Second Jigsaw Review**).
72. The Second Jigsaw Review recommended, relevantly, that NSG ensure all breaches by representatives of financial services law are reported and addressed, including the breaches identified in the Jigsaw Review, and to assess whether any of those breaches were serious and/or systemic, and if they should be reported to ASIC.
73. NSG did not record any of the breaches identified in the Jigsaw Review in the Breaches Register, nor did it report any of the breaches identified in the Jigsaw Review to ASIC.

Ashurst Review – June and December 2013

74. In the second half of 2013, Ashurst provided NSG with advice about the following matters:
- (a) client files;
  - (b) the best interests obligations in s 961B of the Act; and
  - (c) NSG’s compliance framework.

Client File Review

75. In June 2013, Ashurst commenced a review of five advisers, Daniel

Lamanna, Bilal El-Helou, Brian Sayers, Tom Maloney and Sean Santoro, by reviewing one client file for each adviser (**the Ashurst Client File Review**).

76. The Ashurst Client File Review did not result in a final report. Ashurst identified the following negative issues with the SOAs prepared by Lamanna, El-Helou, Sayers and Maloney:
- (a) the advice in each of the SOAs was given in a single sentence and was identical across all four client files of the four different advisers;
  - (b) the advice did not explain how the products and strategies recommended were relevant to the clients' needs;
  - (c) the SOAs did not explain what the consequences of switching superannuation funds might be;
  - (d) the SOAs did not set out any likely costs or negative consequences of following the advice in a way that was personalised to the clients; and
  - (e) the SOAs included a table comparing existing and recommended superannuation products, but did not explain the differences between the two funds.
77. Further, with respect to the Sayers client file, the Ashurst Client File Review found that:
- (a) the client's mortgage debt was incorrectly recorded as \$12,000 rather than \$120,000, which affected the calculation of the client's personal circumstances and may have rendered the resulting advice misleading and/or inappropriate for the client;
  - (b) other than a comparison of the cost of insurance premiums, there was little to show that Sayers had considered other insurance or superannuation options that may be available; and
  - (c) there was nothing in the SOA or the file to indicate that the effect of a signed variation to recommendations had been adequately explained to or was understood by the client.
78. NSG initially agreed to provide Ashurst with ten client files to review, but ultimately only provided five client files to review, which were the subject of a draft review report. Ashurst did not provide NSG with a finalised client file review report.
79. At the time of the Ashurst Client File Review, and during the relevant time, NSG knew:
- (a) each of the matters set out in paragraphs 66 to 69 above; and
  - (b) the matters set out in paragraphs 75 to 78 above.

Best Interests Advice

80. On 16 July 2013, Ashurst provided NSG with written draft advice concerning NSG's obligations under the FOFA regime, and a draft 'Pro Forma Adviser Best Interests Checklist'. The draft advice recommended that NSG, as an interim measure pending comprehensive advice from Ashurst:
- (a) immediately inform advisers of their obligations under the best

- interests duty;
- (b) require that advisers complete a Best Interests Checklist for all clients advised from 1 July 2013 onwards;
  - (c) require that advisers retain a copy of the completed Best Interests Checklist on each client file; and
  - (d) require that advisers inform NSG immediately of any issues identified in relation to a client file as a result of their answers to the questions in the Best Interests Checklist.
81. On 22 August 2013, Ashurst provided NSG with a document entitled 'Best Interests Declaration' under cover of an email in which Ashurst stated that the document, together with Ashurst's proposed template SOA and Client Fact Finder, would assist NSG "to demonstrate that it has complied with its obligations under FOFA, by taking reasonable steps to ensure that its representatives comply with the best interests duty".
82. On 21 January 2014, Ashurst provided NSG with a document entitled 'Best Interests Declaration', in which Ashurst stated "would be a useful prompt" for advisers to complete "before a Statement of Advice is issued".
83. NSG did not:
- (a) follow or implement the interim advice provided on 6 July 2013, at the time of receiving the advice or at all;
  - (b) incorporate the Best Interests Declaration, or any form of it, into its SOA template;
  - (c) incorporate the Best Interests Declaration into its Client Fact Finder template; or
  - (d) require any of its authorised representatives to use the Best Interests Declaration.

Compliance Framework

84. On 8 November 2013, Ashurst provided NSG with written advice regarding its compliance framework and recommended, inter alia, that NSG:
- (a) ensure that the records of education and training received by NSG representatives are kept up to date, in order to help NSG to demonstrate that it is satisfying its obligations as an AFSL holder;
  - (b) consider regular reviews of recorded client complaints to identify systemic problems and develop strategies to address such problems as they are identified;
  - (c) consider the effectiveness of its breach reporting policy and whether additional training is required to ensure NSG employees report all breaches and all possible breaches in accordance with policy; and
  - (d) consider recruiting more experienced representatives and compliance personnel to enable NSG to improve compliance with its legal obligations, provide appropriate monitoring and supervision, and to meet current and anticipated operational requirements.
85. NSG did not implement the recommendations referred to above.

ASIC Review – 2013

86. Between May and December 2013, ASIC conducted a review of 11 NSG client files, and found that 10 contained inappropriate advice.
87. On 28 January 2014, NSG informed ASIC that:
- (a) it intended to lodge a significant breach notification with ASIC in respect of a defective SOA template;
  - (b) it intended to lodge a breach notification with ASIC in respect of defective SOAs provided to four clients;
  - (c) it would appoint two full-time compliance personnel, including a Senior Compliance Manager, to take responsibility for implementing improvements to its compliance framework, including:
    - (i) conducting quarterly audits of at least one randomly selected client advice file for each adviser;
    - (ii) arranging for an external provider to conduct an annual review of at least one randomly selected client advice file for each adviser; and
  - (d) it would implement changes to the NSG SOA template, including a requirement for advisers to make a series of declarations related to consideration by the adviser of the best interests duty prior to issuing an SOA to a client.
88. NSG has not taken the steps in paragraph 87 above.

Assured Support – May 2015

89. In 2015, NSG engaged Assured Support to review five client files handled by NSG Representatives Bilal El-Helou, Adrian Chenh, Bevan Heneric, Benjamin Herzog and Mark Pearson, which were selected by NSG (**the Assured Review**).
90. The Assured Review identified the following issues across the five client files:
- (a) the SOAs failed to adequately reflect the information collected and retained in the client file and client records, and failed to address the clients' stated objectives;
  - (b) there was insufficient consideration of whether the existing superannuation fund or insurance provider could deliver an equivalent benefit to that recommended by the adviser;
  - (c) in several cases, the SOA, the Client Fact Finder, and the product application forms all had the same date. The Client Fact Finder and the product application forms were signed by the client;
  - (d) the insurance recommended by the adviser was considerably more expensive than the client's existing insurance, but there was no or inadequate explanation for why this was appropriate for the client; and
  - (e) in at least one case, the cost of the recommended insurance monthly premiums was half the client's monthly superannuation



contributions, whereas the client's main stated financial objective was to retire within 3–10 years.

91. The Assured Review recommended that NSG provide its advisers with “immediate refresher training” on the following subject areas:
- (a) appropriate product replacement advice;
  - (b) the best interests duty; and
  - (c) the client priority rule.
92. The Assured Review also recommended that NSG ensure advisers undertake regular compliance training and increased monitoring and supervision to address the failures identified by Assured.

**(e) NSG's Compliance Policies**

93. During the relevant period, NSG did not have any policy which addressed the NSG Representatives' statutory duties and requirements under Division 2 of Part 7.7A of the Act.

Policies regarding the provision of advice

94. During the relevant period, NSG had a policy entitled ‘Conflicts of Interest’ dated 14 June 2011 (**Conflicts Policy**).
95. The Conflicts Policy:
- (a) did not address potential conflicts that could arise where an adviser was remunerated partly or wholly by commission;
  - (b) did not contain any information or guidance as to the consequences for advisers of breaching the policy; and
  - (c) was not updated following the introduction of Division 2 of Part 7.7A of the Act.
96. During the relevant period, NSG had a policy entitled ‘Issuing a Statement of Advice’ dated 3 April 2014 and revised on 13 January 2015 (**SOA Policy**), which required NSG Representatives to ensure that SOAs were signed off by the client prior to the adviser commencing to apply for products recommended by the client to the adviser.
97. During the relevant period, NSG Representatives did not follow the SOA Policy for each of the clients set out in Part V of this SOAF.
98. At or shortly after the date of each SOA prepared for each of the clients in Part V, NSG knew the matters in paragraph 97 above.
99. During the relevant period, NSG had policies entitled ‘How to Handle and Communicate Revised Terms’ dated 28 January 2014 (**Revised Terms Policy**), and ‘Handling Revised Terms: When Replacing Existing Insurance Cover’, dated 29 January 2014 (**Revised Terms and Insurance Policy**) which required NSG Representatives to advise the client if an insurance company offered revised terms.
100. During the relevant period, there were instances where NSG Representatives did not follow the Revised Terms Policy and the Revised Terms and Insurance Policy, as shown by the matters set out in paragraphs 112(a) and

- (c), being complaints recorded in the Complaints Register.
101. At or shortly after the date of each incident, NSG knew the matters in paragraph 100 above.
102. During the relevant period, NSG had a policy entitled ‘Compliance Arrangements’ dated 16 May 2011 (**Compliance Policy**), which stated that:
- (a) NSG would survey clients immediately after their appointment with an NSG Representative;
  - (b) NSG would check all SOAs and the recommendations within them to ensure they were appropriate prior to the SOA being completed; and
  - (c) NSG would survey clients once the recommended advice had been implemented.
103. The Compliance Policy was not followed or enforced in that, for the clients listed in Part V of this ASOF:
- (a) NSG did not survey the clients immediately after their appointment with an NSG Representative; and
  - (b) NSG did not check the SOAs and recommendations within them to ensure they were appropriate prior to the SOA being completed.
104. The Compliance Policy was not updated following the introduction of Division 2 of Part 7.7A of the Act until 11 November 2015.
105. During the relevant period, NSG had a policy entitled ‘Responsible Managers’ dated 10 November 2011, which:
- (a) defined Responsible Manager as “those persons on whom NSG will depend in order to meet the organisational competency requirements under law and the various license obligations”, and who would hold “positions that make the significant day-to-day business decisions about the ongoing provision of financial services”, and “of good fame and character”;
  - (b) stated that the Compliance Manager would review annual individual performance reviews of Responsible Managers to ensure performance was consistent with agreed standards; and
  - (c) stated that the Compliance Manager would “review compliance incidence reports and registers to identify recurring or systemic development or competency deficiencies in respect to Responsible Managers”.
106. The Responsible Managers policy was not followed or enforced in that:
- (a) the persons identified in paragraph 14 above did not at any time make significant day-to-day decisions about the ongoing provision of financial services at NSG;
  - (b) NSG did not conduct annual performance reviews for Responsible Managers;
  - (c) during the relevant time, Brian Sayers and Ari Papapavlou were subject to complaints by clients with respect to the provision of financial advice, and/or found to be noncompliant with financial

services law by internal NSG reviews, the Jigsaw Review, the Ashurst Client File Review, described at paragraphs 67 and 68, and 76 and 77 above; and

- (d) Sayers, Chenh, and Papapavlou continued as Responsible Managers from NSG's AFSL following the findings and complaints referred to in paragraph 91 above.

107. The Responsible Managers policy was not updated following the introduction of Division 2 of Part 7.7A of the Act.

Policies regarding client complaints and licensee breaches

108. During the relevant period, NSG held the following policies:

- (a) Licensee Breaches Policy dated 10 November 2011 (**Breaches Policy**);
- (b) Dispute Resolution Policy dated 22 May 2011 (**Complaints Policy**).

109. The Breaches Policy stated that NSG Representatives who were aware of or noticed a breach should report it to the Compliance Manager or Production Executive Secretary, who in turn must enter all breaches in the breach register.

110. The Complaints Policy stated that where complaints could not be resolved within 48 hours, the complaint should be lodged with the Compliance Officer, who would then log the complaint in the Complaints Register.

111. The Breaches Policy and the Complaints Policy:

- (a) were not updated following the introduction of the FOFA provisions of the Act until 27 July 2014;
- (b) did not contain any information or guidance about how the policy was to be enforced; and
- (c) did not contain any information or guidance about the consequences for NSG Representatives of breaching the policy.

112. NSG's internal register of complaints by clients made before and during the relevant time (**Complaints Register**), recorded 18 complaints from clients made between 17 January 2013 and 14 April 2015, including the following:

- (a) the NSG Representative advised a client that his income protection insurance application had been accepted and was active, but failed to advise the client that the application had in fact been rejected by the insurance company, leaving the client without income protection insurance;
- (b) a client's superannuation was rolled over to another company without the client's permission, and after the client had written to the NSG Representative instructing the adviser not to roll over her superannuation;
- (c) a client's insurance was changed, and then cancelled, without the client's permission or knowledge;
- (d) a written SOA was provided after the date of the meeting with the client at which advice was given, and after the advice had been

implemented, but back-dated to the date of the meeting;

- (e) NSG Representatives did not properly disclose fees, or did not disclose fees at all;
- (f) the NSG Representative recommended a superannuation fund for which the client was not eligible;
- (g) clients were advised to take out insurance within their superannuation funds that cost more than, or a substantial proportion of, the client's superannuation contributions;
- (h) the NSG Representative did not disclose a client's pre-existing medical condition in an insurance application form; and
- (i) the NSG Representative promised to cancel an insurance policy, but failed to do so.

113. For each of the complaints in the Complaints Register:

- (a) NSG concluded and recorded that neither the NSG Representative nor NSG had committed any breach of law that was required to be reported to ASIC; and
- (b) NSG did not record any sanctions or consequences for NSG Representatives, other than one NSG Representative paying from his own funds for refunded fees and lost investment income, as set out below at paragraph 239.

114. Further, the Complaints Register:

- (a) did not record either of the complaints identified in the El-Helou audit described at paragraph 57(h) above;
- (b) did not record a complaint made by NSG client Person H on 14 April 2015 in respect of advice by NSG Representative Bevan Heneric described at paragraphs 285 to 316 below, and

accordingly, was not compliant with NSG's own Complaints Policy.

115. NSG's internal register of breaches for the relevant period, entitled 'Breaches Register' (**Breaches Register**), recorded four breaches by NSG Representatives made in July, September and December 2013, and March 2015, of financial services law in relation to financial advice provided to clients:

- (a) a SOA contained incorrect fee information for a recommended superannuation product;
- (b) there was an inconsistency between the Client Fact Finder and the SOA regarding the client's risk profile;
- (c) a SOA did not include any text explaining the adviser's recommendations; and
- (d) a Client Fact Finder failed to record that the client had two dependent children, which was disclosed to the adviser. Product application forms, including one for a loan, were submitted containing wrong information. On investigation, NSG determined that "this is a breach of our license regulations" and "this is considered by ASIC financial

gain and ‘whiting out’ details to present a different picture than what is actually true is considered fraud”.

116. NSG did not report to ASIC any of the breaches or potential breaches by NSG Representatives listed in the Breaches Register as set out above.
117. Further, the Breaches Register:
- (a) did not record any of the breaches or potential breaches identified in the El-Helou audit described at paragraph 57 above;
  - (b) [sub-paragraph deleted];
  - (c) did not record any of the breaches or potential breaches identified in the Ashurst Client File Review described at paragraphs 76 to 77 above;
  - (d) did not record any of the breaches or potential breaches identified in the Assured Review described at paragraph 90 above;
  - (e) did not record any of the breaches identified by NSG to ASIC in the letter dated 28 January 2014 described at paragraph 87(a) and (b) above;
  - (f) did not record the breach or potential breach identified in the complaint by Person G in October 2014 regarding advice provided by Chenh, as set out at paragraph 255 below;
  - (g) accordingly, was not compliant with NSG’s Breaches Policy; and
  - (h) does not record any sanctions or consequences for NSG Representatives, other than two instances of the NSG Representative correcting the incomplete or inaccurate SOAs.

**(f) Remuneration and Sales Targets**

118. In the period prior to around 1 July 2013, NSG had a “commission only” remuneration model for NSG Representatives, whereby such representatives would only be compensated by way of commissions for sales of life risk insurance products and superannuation rollovers.
119. In the period after around 1 July 2013:
- (a) NSG adopted a remuneration model whereby NSG Representatives were to receive a base salary as well as a bonus if monthly sales exceeded monthly sales targets; but
  - (b) in practice, continued to employ a “commission only” remuneration model with respect to some NSG Representatives.
120. During the relevant period, NSG Representatives were required to meet weekly sales targets.
121. When NSG Representatives did not meet their weekly sales targets:
- (a) they would at times be given a “pink sheet”, containing a warning by NSG supervisors; and
  - (b) they would at times be required by NSG to repeat parts of the initial training.

122. During the relevant period, NSG conducted a weekly sales meeting where:
- (a) NSG distributed a document to all NSG Representatives who were present at the meeting, which set out each NSG Representative's sales from the previous week in monetary terms;
  - (b) there was a discussion about how much insurance and how much superannuation each NSG Representative sold in the previous week; and
  - (c) each NSG Representative present at the meeting was required to tell a "success story" from the previous week about a sale they had made to a client.

## V CONTRAVENTIONS OF THE ACT

### (a) Contraventions relating to advice by El-Helou to NSG client Person D

#### Relevant conduct by El-Helou with respect to Person D

##### The Person D meeting

123. On 20 August 2013, El-Helou, as an NSG Representative, attended the home of Person D for a meeting to provide Person D with personal financial advice as a retail client (**the Person D meeting**).
124. At the Person D meeting, Person D told El-Helou that:
- (a) he had an annual income of \$95,000 inclusive of superannuation;
  - (b) he owned a home valued at about \$650,000 subject to a mortgage with BankWest of approximately \$430,000;
  - (c) he had approximately \$60,000 in a UniSuper superannuation fund; and
  - (d) he had superannuation in another fund from his time working in the Catholic education system, but did not know the name of the fund or the amount in the fund.
125. At the time of the Person D meeting, Person D, unbeknownst to him, already had life and income protection insurance through his existing UniSuper superannuation fund.
126. At the Person D meeting, Person D provided El-Helou with copies of two recent yearly group certificates and a copy of his most recent UniSuper Benefit Statement as at 30 June 2013 (**the Person D UniSuper Statement**), which referred to Person D having life and income protection insurance through his existing UniSuper superannuation fund.
127. At the Person D meeting, Person D told El-Helou that his financial objective was, relevantly, to consolidate his superannuation funds into one fund.
128. At the Person D meeting, El-Helou orally advised Person D to:
- (a) roll over all of his existing superannuation to a fund operated by Macquarie (Person D **superannuation advice**); and

- (b) take out life and disability insurance and income protection insurance with Macquarie (Person D **insurance advice**).
129. In respect of the Person D superannuation advice, El-Helou:
- (a) orally advised Person D that Macquarie was a better superannuation account, with much better returns than UniSuper, and that it had a spreading portfolio and was the low risk high return portfolio that NSG uses;
  - (b) did not provide Person D with any information or documents comparing his existing superannuation funds with the recommended Macquarie fund;
  - (c) did not suggest any alternative superannuation funds other than the Macquarie fund; and
  - (d) did not provide any information about the fees and costs of the recommended Macquarie fund.
130. In respect of the Person D insurance advice, El-Helou:
- (a) did not advise Person D that he already held life and income protection insurance through his existing UniSuper superannuation fund, or discuss whether there was an option to take out insurance with Person D's Catholic Super superannuation fund, which El-Helou subsequently identified as the superannuation fund Person D had from his time working in the Catholic education system;
  - (b) orally advised Person D that any insurance premiums would be paid from the Macquarie fund and the cost of insurance would be offset by interest earned on his superannuation;
  - (c) did not discuss with Person D, or provide any oral advice to Person D, about the appropriate level of insurance cover;
  - (d) did not suggest any alternative insurance providers other than Macquarie;
  - (e) did not otherwise explain his reason for advising Person D to take out insurance with Macquarie; and
  - (f) did not provide any information about the fees and costs of the recommended Macquarie insurance.
131. At the Person D meeting, El-Helou did not provide Person D with any information about the commission and fees payable to El-Helou or NSG in relation to his advice and recommendations.
132. After hearing El-Helou's advice and recommendations, during the Person D meeting, Person D:
- (a) agreed to follow El-Helou's recommendations to roll over his superannuation to Macquarie and to take out insurance through the Macquarie fund; and
  - (b) at El-Helou's request, signed a number of forms and documents, which were then retained by El-Helou, being:
    - (i) an authority to proceed bearing the date 27 November 1968,

being Person D's birthdate;

- (ii) an incomplete document entitled Client Fact Finder bearing the date 20 August 2013 (**Person D Fact Finder**);
- (iii) an incomplete document entitled 'Personal Statement – Insurance through Superannuation' bearing the date 27 August 2013;
- (iv) an incomplete UniSuper Portability and Rollover form bearing the date 20 August 2013;
- (v) an incomplete Macquarie Super Accumulator Application Form bearing the date 20 August 2013; and
- (vi) an incomplete Macquarie Life New Business Application bearing the date 20 August 2013.

After the Person D meeting

133. Following the Person D meeting, El-Helou:
- (a) completed or caused to be completed each of the forms listed in paragraph 132(b)(ii) to (vi);
  - (b) arranged for another NSG employee, Tom Maloney, to sign the Macquarie Super Accumulator Application Form bearing the date 20 August 2013, purportedly as a witness of Person D's signature;
  - (c) completed or caused to be completed an NSG form entitled 'Authority to Disclose and/or Receive Information' bearing the date 3 December 2013; and
  - (d) completed or caused to be completed an Australian Government form entitled 'Request to transfer whole balance of superannuation benefits between funds' bearing the date 3 December 2013.
134. Following the Person D meeting, on about 23 August 2013, El-Helou obtained or caused to be obtained a quote from Macquarie with respect to life and disability and income protection insurance.
135. Following the Person D meeting, El-Helou prepared or caused to be prepared at NSG a document entitled 'Statement of Advice' for Person D bearing the date 20 August 2013 (**Person D SOA**), which was the same date as the Person D meeting and the incomplete forms signed by Person D and set out at paragraph 132(b)(ii) to (vi) above.
136. Following the Person D meeting, El-Helou submitted or caused to be submitted on behalf of Person D the product application forms referred to at paragraphs 132(b)(iv) to (vi) above in order to implement the Person D superannuation advice and the Person D insurance advice. However, notwithstanding the Person D superannuation advice, El-Helou requested or caused to be requested the rollover of most but not all of Person D's UniSuper superannuation funds to Macquarie and sought to leave \$5,000 of those superannuation funds in Person D's UniSuper account, without explaining to Person D his reason for doing so.
137. In about August 2013, a superannuation account in Person D's name was opened with Macquarie, but no superannuation funds were rolled into the



Macquarie fund until January 2014.

138. On about 12 September 2013, UniSuper wrote to Person D to notify him that it had been unable to process the request to roll over Person D's "entire accumulation component less \$5000" because Person D "[did] not have any balance in [his] accumulation component."
139. The superannuation funds held by Person D with UniSuper were not rolled over into the Macquarie fund subsequent to UniSuper notifying Person D that it could not process his rollover request.
140. On about 15 January 2014, Person D's superannuation in the amount of around \$28,903.50 held with Catholic Super was rolled into the Macquarie fund.
141. On about 3 September 2013, insurance policies in Person D's name were taken out with Macquarie for:
  - (a) life and disability insurance of \$850,000 at a cost of \$4,737.36 per year or \$394.78 per month; and
  - (b) income protection insurance of \$5,962 per month at a cost of \$1,955.88 per year or \$162.99 per month.
142. Person D did not receive a copy of the Person D SOA, or any other written statement of advice, from El-Helou or NSG, either prior to agreeing to implement the Person D superannuation advice and the Person D insurance advice, or at all.
143. Person D was not advised by El-Helou that El-Helou had sought to leave \$5,000 in Person D's UniSuper superannuation fund while requesting that the rest of the UniSuper funds be transferred to Macquarie, either prior to agreeing to implement the Person D superannuation advice, or at all.
144. Person D was not advised by El-Helou that his UniSuper superannuation funds could not be rolled over to Macquarie, either prior to agreeing to implement the Person D superannuation advice, or at all.
145. Person D was not advised by El-Helou that he held a superannuation fund with Catholic Super, or the exact amount of superannuation in that fund, either prior to agreeing to implement the Person D superannuation advice, or at all.
146. Person D was not advised by El-Helou that he already had life insurance and income protection insurance through his UniSuper superannuation fund, either prior to agreeing to implement the Person D insurance advice, or at all.

Consequences of advice

147. In the period between August 2013 and 31 December 2015, Person D:
  - (a) continued to receive his employer superannuation contributions into his UniSuper fund;
  - (b) paid administration fees in respect of both his UniSuper superannuation fund and his Macquarie fund, including around \$251.72 in fees to Macquarie out of his Macquarie fund;
  - (c) paid around \$12,848.79 in insurance premiums out of his Macquarie

fund; and

- (d) paid around \$2,904.11 in adviser fees to NSG out of his Macquarie fund.

148. In the period between around August 2013 and around 31 December 2015, the balance of Person D's superannuation which was rolled into the Macquarie fund had decreased by \$11,579.92, from \$28,903.50 to \$17,323.58.

Admissions of contraventions

Contraventions of ss 961B(1) and 961G by El-Helou

149. By reason of the matters set out at paragraphs 123 to 148 above, El-Helou did not act in the best interests of Person D in relation to his advice to Person D and thereby breached s 961B(1) of the Act.

150. The advice El-Helou provided to Person D was not appropriate to Person D, in breach of s 961G of the Act, by reason of the following matters:

- (a) Person D's UniSuper superannuation funds were not capable of being rolled over to Macquarie to achieve Person D's objective of consolidating his superannuation funds;
- (b) as a result of Person D's Catholic Super funds being rolled over to Macquarie and Person D's UniSuper funds not being rolled over to Macquarie, Person D was placed in circumstances whereby his employer continued to pay contributions to his UniSuper fund, while Person D made no contributions to his Macquarie fund, and continued to pay the administration fees with respect to both funds;
- (c) by paying the insurance premiums out of his Macquarie fund, Person D's superannuation was being depleted and not replaced by contributions or investment income and could not grow; and
- (d) by reason of the failure to roll over Person D's UniSuper to Macquarie (and thereby cancel his existing insurance with UniSuper), Person D was double insured by both Macquarie and UniSuper.

Contraventions of s 961L by NSG

155. In providing the Person D superannuation advice and the Person D insurance advice, El-Helou followed the new client advice process set out in paragraphs 22 to 28 above.

156. Further, at all material times during his engagement as an NSG Representative, El-Helou:

- (a) was subject to NSG's training systems and practices as set out in paragraphs 29 to 50 above;
- (b) was subject to internal and external reviews of his work as an NSG Representative in February 2012, June 2013, September 2013, and May 2015, that all identified the problems with El-Helou's compliance with financial services law as set out in paragraphs 56 to 57, 65 to 69, 75 to 76, and 90 above; and

- (c) after an initial three months on retainer, was remunerated entirely on a commission basis.

157. [paragraph deleted]

158. NSG admits that, by reason of the matters set out in paragraphs 22-122 and 155-156 above, NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that El-Helou complied with ss 961B(1) and 961G of the Act in providing advice to Person D.

**(b) Contraventions relating to advice by El-Helou to NSG client Person C**

Relevant conduct by El-Helou with respect to Person C

The Person C meeting

159. On 15 July 2014, El-Helou, as an NSG Representative, attended the home of Person C for a meeting to provide Person C with personal financial advice as a retail client (**the Person C meeting**).

160. At the Person C meeting, Person C told El-Helou that:

- (a) he was self-employed with an annual income of approximately \$70,000;
- (b) he was renting his home;
- (c) he had approximately \$54,000 in superannuation with AMP;
- (d) he was contributing about \$700 per month to his superannuation;
- (e) he had credit card debt of about \$4,000; and
- (f) he had a business loan of about \$60,000 owing to Westpac which he took out to repay a tax debt owed by his business to the ATO.

161. At the time of the Person C meeting, Person C, unbeknownst to him, already had life insurance of \$54,996.11 and disability insurance of \$53,786 included within his existing AMP superannuation fund.

162. At the Person C meeting, Person C told El-Helou that his financial objectives were, relevantly, to maximise his superannuation and to make sure he had enough money for retirement.

163. At the Person C meeting, El-Helou orally advised Person C:

- (a) to roll his existing superannuation into a fund operated by OnePath (**Person C superannuation advice**); and
- (b) that the OnePath superannuation would include a small amount of insurance (**Person C insurance advice**).

164. In respect of the Person C superannuation advice, El-Helou:

- (a) orally advised Person C that his AMP superannuation fund was not performing for him, that OnePath was a good fund and that he had recently rolled over his own father's superannuation to the same fund;
- (b) did not provide Person C with any information or documents comparing his existing superannuation fund with the recommended

- OnePath fund;
- (c) did not suggest any alternative superannuation funds other than the OnePath fund; and
  - (d) did not provide any information about the fees and costs of the recommended OnePath fund.
165. In respect of the Person C insurance advice, El-Helou:
- (a) orally advised Person C that the cost of the OnePath insurance would be minimal;
  - (b) did not advise Person C that he already held life insurance and disability insurance through his existing AMP superannuation fund;
  - (c) did not discuss with Person C, or provide any oral advice to Person C about, the appropriate level of insurance cover;
  - (d) did not suggest any alternative insurance providers other than OnePath; and
  - (e) did not provide any information about the fees and costs of the OnePath insurance.
166. At the Person C meeting, El-Helou did not provide Person C with any information about the commission and fees payable to El-Helou or NSG in relation to his advice and recommendations.
167. After hearing El-Helou's advice and recommendations, during the Person C meeting:
- (a) Person C agreed to follow El-Helou's recommendation;
  - (b) El-Helou made a telephone call and then orally advised Person C that he had "cancelled" Person C's superannuation with AMP and that it would be rolled over to OnePath; and
  - (c) Person C, at El-Helou's request, signed a number of forms and documents, which were then retained by El-Helou, being:
    - (i) an authority to proceed bearing the date 15 July 2014;
    - (ii) an incomplete document entitled Client Fact Finder dated 15 July 2014 (**the Person C Fact Finder**);
    - (iii) an incomplete document entitled 'Personal statement – Insurance through Superannuation' bearing the date 15 July 2014;
    - (iv) an incomplete National Sterling Financial Management Authority to Disclose and/or Receive Information dated 15 July 2014;
    - (v) an incomplete One Path document entitled 'Application Forms – One Answer Frontier Personal Super' dated 15 July 2014;
    - (vi) an incomplete Australian Government form entitled 'Request to transfer whole balance of superannuation benefits between

funds' 15 July 2014; and

- (vii) an incomplete Australian Taxation Office Standard Choice Form bearing the date 15 July 2014.

After the Person C meeting

- 168. Following the Person C meeting, El-Helou completed or caused to be completed the forms referred to at paragraphs 167(c)(ii)-(vii) above.
- 169. Following the Person C meeting, on about 25 July 2014 and 28 July 2014 respectively, El-Helou obtained or caused to be obtained quotes from OnePath and Macquarie with respect to life, disability and income protection insurance.
- 170. Following the Person C meeting, El-Helou prepared or caused to be prepared at NSG a document entitled 'Statement of Advice' for Person C bearing the date 15 July 2014 (**Person C SOA**), which was the same date as the Person C meeting and the incomplete forms signed by Person C and set out at paragraph 167(c)(ii)-(vii) above.
- 171. Following the Person C meeting, El-Helou, submitted or caused to be submitted on behalf of Person C the product application forms referred to at paragraphs 167(c)(ii)-(vii) above in order to implement the Person C superannuation advice and the Person C insurance advice.
- 172. On or about 1 August 2014, a superannuation fund in Person C's name was opened with OnePath.
- 173. On or about 7 August 2014, around \$53,786.50 of superannuation funds held by Person C with AMP were rolled into the OnePath fund.
- 174. On or about 1 August 2014, insurance policies in Person C's name were taken out with OnePath for:
  - (a) life insurance of \$150,000 at a cost of \$2,098.21 per year or \$174.85 per month
  - (b) disability insurance of \$150,000 at a cost of \$1,454.53 per year or \$121.21 per month; and
  - (c) income protection insurance of \$4,375 per month at a cost of \$4,103.50 per year or \$341.96 per month,the total cost of all premiums being \$7,656.24 per year or \$638.02 per month.
- 175. Person C did not receive a copy of the Person C SOA, nor any other written statement of advice, from El-Helou or NSG, prior to agreeing to implement the Person C superannuation advice and the Person C insurance advice.
- 176. Person C was not advised by El-Helou that he already had life insurance and disability insurance through his AMP superannuation fund, either prior to agreeing to implement the Person C insurance advice, or at all.

Consequences of advice

- 177. In the period between around August 2014 and around May 2015, when Person C cancelled his insurance policies with OnePath, Person C:
  - (a) contributed \$700 per month to his superannuation fund;

- (b) paid monthly insurance premiums of around \$638 out of the OnePath fund;
- (c) paid a lump-sum adviser fee of \$1,877.65 as well as ongoing adviser fees to NSG out of his OnePath fund.

Admissions of contraventions

Contraventions of ss 961B(1) and s 961G by El-Helou

178. By reason of the matters set out in paragraphs 159 to 177 above, El-Helou did not act in the best interests of Person C in relation to his advice to Person C and has thereby breached s 961B(1) of the Act.
179. Further, NSG admits that the advice El-Helou provided to Person C was not appropriate to Person C, in breach of s 961G of the Act because Person C did not wish to take out substantial life, disability and income protection insurance, he was not aware that such insurance was taken out in his name, and the insurance premiums depleted most of his monthly superannuation

Contraventions of s 961L by NSG

180. In providing the Person C superannuation advice and the Person C insurance advice, El-Helou followed the new client advice process set out in paragraphs 22 to 28 above.
181. Further, at all material times during his engagement as an NSG Representative, El-Helou:
- (a) was subject to NSG's training systems and practices as set out in paragraphs 29–50 above;
  - (b) was subject to internal and external reviews of his work as an NSG Representative in February 2012, June 2013, September 2013, and May 2015, that all identified the problems with El-Helou's compliance with financial services law as set out in paragraphs 56 to 57, 65 to 69, 75 to 76, and 90 above; and
  - (c) after an initial 3 months on retainer, was remunerated entirely by commission.
182. NSG admits that, by reason of the matters set out in paragraphs 22-122 and 180-181 above, NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that El-Helou complied with ss 961B(1) and 961G of the Act in providing advice to Person C.

**(c) Contraventions relating to advice by El-Helou with respect to NSG client Person E**

Relevant conduct by El-Helou with respect to Person E

The first Person E meeting

183. On about 31 May 2012, El-Helou, as an NSG Representative, attended the home of Person E for a meeting to provide Person E with personal financial advice as a retail client (**the first Person E meeting**).
184. At the first Person E meeting, Person E told El-Helou that:
- (a) he was aged 58 years old and was looking to retire at around the age

- of 70;
- (b) he was concerned that his current superannuation fund, Plum, was not performing well and he was being charged high fees; and
  - (c) he had approximately \$120,000 in superannuation with Plum.
185. At the first Person E meeting, Person E also told El-Helou that:
- (a) his tax advisor had suggested that Person E obtain income protection insurance;
  - (b) he had smoked for two or three years in his early twenties, and drank a glass of wine or beer most nights;
  - (c) he was discharged from the army in 2001 because of heart problems; and
  - (d) he had undergone surgery in June 2002 to replace a heart valve, had been taking and was continuing to take heart medication for aortic stenosis, and was taking medication for blood pressure.
186. Further, at the first Person E meeting, Person E told El-Helou that he and his wife [omitted]:
- (a) had two dependent children aged 16 and 19;
  - (b) had a gross joint annual income of approximately \$131,000;
  - (c) owned a property outright in Elimbah, Queensland, worth about \$400,000; and
  - (d) owned an investment property in Deepdene, Victoria, valued at about \$750,000 with a mortgage of about \$350,000.
187. At the time of the first Person E meeting, unbeknownst to him, Person E already had insurance within his Plum superannuation fund which covered him for \$59,267.43 each for life and disability, and \$49,389.53 per annum in income protection insurance. Person E was paying approximately \$325 per year in premiums for these policies.
188. At the first Person E meeting, Person E told El-Helou that his financial objectives were, relevantly, to ensure that he had a “decent retirement nest egg” so he could “have some comfort” about his financial position when he retired, as he was concerned he did not have sufficient savings or superannuation for retirement; and to take out some income protection insurance.
189. At the first Person E meeting, El-Helou orally advised Person E to:
- (a) roll over his existing superannuation into a fund operated by North Personal Superannuation (**first Person E superannuation advice**); and
  - (b) take out life and TPD insurance, and income protection insurance with AXA (**first Person E insurance advice**).
190. In respect of the first Person E superannuation advice, El-Helou;
- (a) orally advised Person E that North was “a good performing fund”;

- (b) did not provide Person E with any information or documents comparing his existing Plum fund with the recommended North fund;
  - (c) did not suggest any alternative superannuation funds other than the North fund; and
  - (d) told Person E there would be an establishment fee for switching his superannuation from Plum to North, but did not provide Person E with any information about the ongoing fees charged by North.
191. In respect of the first Person E insurance advice, El-Helou:
- (a) did not advise Person E that he may already hold life, disability and/or income protection insurance with Plum, nor discuss whether there was an option to take out insurance with Plum;
  - (b) did not discuss with Person E, or provide any oral advice to Person E about, the appropriate level of insurance cover;
  - (c) did not suggest any alternative insurance provider other than AXA;
  - (d) did not otherwise explain his reason for advising Person E to take out insurance with AXA; and
  - (e) did not provide any information about the fees and costs of the recommended AXA insurance.
192. At the first Person E meeting, El-Helou did not provide Person E with any information about the commission and fees payable to El-Helou or NSG in relation to his advice and recommendations.
193. After hearing El-Helou's advice and recommendations, during the first Person E meeting, Person E:
- (a) agreed to follow El-Helou's recommendations to roll over his superannuation to North and to take out insurance with AXA; and
  - (b) at El-Helou's request, signed a number of forms and documents, which were then retained by El-Helou, being:
    - (i) an incomplete document entitled Client Fact Finder dated 31 May 2012 (**Person E Fact Finder**); and
    - (ii) an incomplete AXA document entitled 'AXA Elevate Application Summary Form', dated 8 June 2012 (**AXA Application Form**).

After the first Person E meeting

194. Following the first Person E meeting, El-Helou completed or caused to be completed the forms referred to at paragraph 193(b) above.
195. Following the first Person E meeting, El-Helou prepared or caused to be prepared at NSG a document entitled 'Statement of Advice Risk Insurance' for Person E bearing the date 31 May 2012 (**first Person E SOA**), which was the same date as the Person E meeting and the incomplete forms signed by Person E and set out at paragraph 193(b) above.
196. Following the first Person E meeting, El-Helou submitted or caused to be



submitted the AXA Application Form referred to at paragraph 193(b)(ii) above, in order to implement the first Person E insurance advice.

197. On or about 12 June 2012, a superannuation account in Person E's name was opened with North.
198. On or about 2 July 2012, Person E's superannuation held with Plum was rolled into his superannuation fund held with North.
199. On or about 18 June 2012, a policy in Person E's name was taken out with AXA for life and disability insurance cover of \$200,000 each, and income protection insurance cover of \$71,520 per year, at a total cost of \$6,276 in premiums per annum.
200. Person E did not receive a copy of the first Person E SOA, or any other written statement of advice, from El-Helou or NSG either prior to agreeing to implement the first Person E superannuation advice and the first Person E insurance advice, or at all.
201. Person E was not advised by El-Helou that he already had life, disability, and income protection insurance through his Plum superannuation fund, either prior to agreeing to implement the first Person E insurance advice, or at all.

The second Person E meeting

202. On 15 July 2013, El-Helou, as an NSG Representative, attended Person E's home for a meeting to provide Person E with personal financial advice as a retail client (**the second Person E meeting**).
203. Before the second Person E meeting, El-Helou told Person E by telephone that:
  - (a) North had recently been taken over by AMP and accordingly, it was a good opportunity for Person E to review his superannuation and insurance;
  - (b) Person E should increase the insurance within his superannuation; and
  - (c) the cost of the premiums would be covered by any additional contributions made by Person E to the superannuation fund, so Person E would not be out of pocket.
204. At the second Person E meeting, Person E told El-Helou that:
  - (a) he wanted a similar type of investment portfolio within his superannuation that he had with North; and
  - (b) he wanted the same level of insurance cover as he had with AXA.
205. At the second Person E meeting, El-Helou orally advised Person E:
  - (a) to roll his existing superannuation with North into a fund operated by Macquarie (**second Person E superannuation advice**); and
  - (b) to switch his life, TPD, and income protection insurance from AXA to Macquarie (**second Person E insurance advice**).
206. In respect of the second Person E superannuation advice, El-Helou;

- (a) did not explain to Person E why Macquarie was preferable to the North fund;
  - (b) did not provide Person E with any information or documents comparing his existing North fund with the recommended Macquarie fund;
  - (c) did not suggest any alternative superannuation funds other than Macquarie; and
  - (d) told Person E there would be a rollover fee for switching his superannuation from North to Macquarie; but did not quantify the rollover fee, or tell Person E whether there would be any other fees charged by Macquarie in respect of the superannuation fund.
207. In respect of the second Person E insurance advice, El-Helou:
- (a) did not discuss with Person E any insurance providers other than Macquarie;
  - (b) did not provide Person E with a document or information that compared the proposed Macquarie insurance with his existing AXA insurance;
  - (c) did not discuss with Person E or provide any oral advice about the increased level of income protection, TPD, and life insurance cover he would require; and
  - (d) did not provide any information about the fees and costs of the recommended and increased level of Macquarie insurance cover.
208. At the second Person E meeting, El-Helou did not provide Person E with any information about the commission and fees payable to El-Helou or NSG in relation to his advice and recommendations.
209. After hearing El-Helou's advice and recommendations, during the second Person E meeting, Person E:
- (a) agreed to follow El-Helou's recommendations to roll over his superannuation to Macquarie and to take out insurance with Macquarie; and
  - (b) at El-Helou's request, signed a number of forms and documents, which were then retained by El-Helou, being:
    - (i) an incomplete document entitled 'Choice of Superannuation Fund Standard Choice' dated 15 June 2013;
    - (ii) an incomplete document entitled 'Personal Statement – Insurance Through Superannuation' dated 15 July 2013; and
    - (iii) an incomplete document entitled 'Macquarie Life New Business Application' dated 15 July 2013 (**Macquarie Application Form**).

After the second Person E meeting

210. Following the second Person E meeting, El-Helou completed or caused to be completed the forms referred to at paragraph 209(b) above.

211. Following the second Person E meeting, El-Helou prepared or caused to be prepared at NSG a document entitled 'National Sterling Statement of Advice' for Person E bearing the date 15 July 2013 (**second Person E SOA**), which was the same date as the second Person E meeting and the incomplete forms signed by Person E and set out at paragraph 209(b) above.
212. In preparing the second Person E SOA, El-Helou:
- (a) relied on the information provided to him by Person E during the first Person E meeting about Person E's objectives, financial situation and needs as recorded by El-Helou in the Person E Fact Finder and the AXA Application Form; and
  - (b) did not seek or obtain updated information about Person E's objectives, financial situation and needs.
213. Following the second Person E meeting, El-Helou submitted or caused to be submitted the Macquarie Application Form referred to at paragraph 209(b)(iii) above in order to implement the second Person E insurance advice.
214. On or after 15 July 2013, a superannuation account in Person E's name was opened with Macquarie.
215. On or about 12 August 2013, Person E's superannuation held with North was rolled into his superannuation fund held with Macquarie.
216. On a date after the second Person E meeting, Person E was required by Macquarie to attend a medical examination. This took place at Person E's workplace. At the medical examination, Person E provided the examiner with his medical history including his heart operation in 2002, and his heart condition and related medication, as set out in paragraph 185 above.
217. On a date not now known, but after the medical examination, El-Helou telephoned Person E and told him that:
- (a) Macquarie was not prepared to provide him with income protection insurance; and
  - (b) El-Helou would be able to increase Person E's cover on his life insurance "at no extra cost".
218. On or about 30 July 2013, a policy in Person E's name was taken out with Macquarie for life insurance cover of \$375,000 at a cost of \$6,935.94 in premiums per annum.
219. In September 2013, Person E was advised by Macquarie that Macquarie declined to provide Person E with income protection or disability insurance due to his pre-existing heart condition, which had not been disclosed on his application for insurance.
220. Person E did not receive a copy of the second Person E SOA, or any other written statement of advice, from El-Helou or NSG, before agreeing to implement the second Person E superannuation advice and the second Person E insurance advice, or at all.

#### Consequences of advice

221. In the period between around 12 August 2013 to 30 June 2015, Person E:

- (a) contributed \$26,791.05 comprising superannuation guarantee contributions and salary sacrifice contributions to his Macquarie fund;
- (b) paid \$14,508.52 in insurance premiums from his Macquarie fund; and
- (c) paid \$7,165.58 in upfront and ongoing fees to NSG from his Macquarie fund.

Admissions of contraventions

Contraventions of ss 961B(1) and 961G by El-Helou

222. By reason of the matters set out at paragraphs 183 to 221 above, El-Helou did not act in the best interests of Person E in relation to his advice to Person E in 2013, and thereby breached s 961B(1) of the Act.
223. Further, NSG admits that the advice El-Helou provided to Person E in 2013 was not appropriate to Person E, in breach of s 961G of the Act, by reason that:
- (a) El-Helou failed to disclose to AXA and to Macquarie that Person E suffered from a pre-existing heart condition. As a result, Person E was left without disability and income protection insurance, and was deprived of the disability and income protection insurance he held with Plum; and
  - (b) by paying insurance premiums and adviser fees out of his Macquarie fund that were higher than Person E's and his employer's contributions, Person E's superannuation was being depleted, in circumstances where he was concerned about the adequacy of his superannuation for retirement.

Contraventions of s 961L by NSG

224. In providing the second Person E superannuation advice and the second Person E insurance advice, and to the extent El-Helou relied on information gathered in the 2012 meeting in providing the 2013 advice, El-Helou followed the new client advice process set out in paragraphs 22 to 28 above.
225. Further, at all material times during his engagement as an NSG Representative, El-Helou:
- (a) was subject to NSG's training systems and practices as set out in paragraphs 29 to 50 above;
  - (b) was subject to internal and external reviews of his work as an NSG Representative in February 2012, June 2013, September 2013, and May 2015, that all identified the problems with El-Helou's compliance with financial services law as set out in paragraphs 56 to 57, 65 to 69, 75 to 76, and 90 above; and
  - (c) after a period of three months on retainer, was remunerated entirely by commission.
226. NSG admits that, by reason of the matters set out in paragraphs 22-122 and 224-225 above, NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that El-Helou complied with ss 961B(1) and 961G

of the Act in providing advice to Person E.

**(d) Contraventions relating to advice by Chenh to NSG client Person G**

Relevant conduct by Chenh with respect to Person G

Person G Meeting

227. On 13 July 2013, Person G spoke with an NSG employee who arranged an appointment with an adviser.
228. On 15 July 2013, Chenh, as an NSG Representative, attended the home of Person G for a meeting to provide Person G with personal financial advice as a retail client (**Person G meeting**).
229. At the Person G meeting, Person G told Chenh that:
- (a) after a long period of full-time work in the banking sector, she was now studying nursing part-time, and working casually as a pathology collector, with an annual income of \$19,000 net (inclusive of superannuation);
  - (b) she owned her home in Endeavour Hills, Victoria, outright, which was then valued at about \$430,000; and
  - (c) she had approximately \$220,000 in two superannuation funds, comprised of approximately \$180,000 in a retail fund with Commonwealth Bank of Australia (**CBA**) and \$40,000 in an industry fund with HESTA.
230. At the Person G meeting, Person G provided Chenh with copies of her most recent superannuation statements, as well as copies of identification documents showing her age, and her tax file number.
231. At the Person G meeting, Person G told Chenh her financial objectives were, relevantly:
- (a) to get a better return on her superannuation since her super had not grown substantially following injuries and time off work in 2006 and 2007;
  - (b) to find out, based on her current financial position, whether she had enough superannuation to retire on; and
  - (c) to protect her existing superannuation balance, and not to lose any money as a result of a rollover of her superannuation to an alternative fund.
232. At the Person G meeting, Chenh orally advised Person G to roll over her CBA superannuation into a fund with MLC called Horizon 4 (**Person G superannuation advice**).
233. In respect of the Person G superannuation advice, Chenh:
- (a) orally advised Person G that the MLC fund was “a great fund” that would meet Person G’s financial objectives because it had a preserved principal amount which would be protected, and the interest earned on the fund would be added to the preserved amount every six months;

- (b) orally advised Person G that the MLC fund provided better returns compared with Person G's existing CBA fund;
  - (c) did not otherwise provide any information about the administrative fees of the recommended MLC fund;
  - (d) did not provide Person G with any information or documents comparing her existing superannuation funds to the recommended MLC fund;
  - (e) did not suggest any other superannuation funds other than the MLC fund; and
  - (f) stated there would be a cooling-off period while NSG completed a written statement of advice and other relevant paperwork for the superannuation rollover and sent it to Person G for her review.
234. At the Person G meeting, Chenh told Person G that MLC would pay him a trailing commission for opening an account with them on Person G's behalf, but Person G would not herself have to pay any fees to Chenh or NSG.
235. After hearing Chenh's advice and recommendations during the Person G meeting, Person G:
- (a) agreed to follow Chenh's recommendations with respect to superannuation, subject to the cooling-off period; and
  - (b) at Chenh's request, signed and dated a number of forms and documents, which were then retained by Chenh, including:
    - (i) an authority to proceed dated 15 July 2014;
    - (ii) an incomplete document entitled Client Fact Finder bearing the date 15 July 2014 (**Person G Fact Finder**); and
    - (iii) an incomplete MLC Application Form bearing the date 15 July 2014 (**MLC Application Form**).

After the Person G meeting

236. Following the Person G meeting, Chenh:
- (a) completed or caused to be completed the forms referred to at paragraph 235(b)(ii) and (iii) above; and
  - (b) arranged for another NSG employee, Michael Decorrado, to sign the MLC Application Form bearing the date 15 July 2014, purportedly as a witness of Person G's signature.
237. Following the Person G meeting, Chenh prepared or caused to be prepared at NSG a document entitled Statement of Advice bearing the date 15 July 2014 (**Person G SOA**), which was the same date as the Person G meeting and the incomplete forms signed by Person G and set out at paragraph 235(b)(ii) and (iii) above.
238. On or about 21 July 2014, Chenh's lodgement was rejected by NSG's Verifications Department, on the basis that Chenh was required to confirm whether Person G had insurance through her current superannuation fund. Chenh subsequently confirmed that Person G had no existing insurance.

239. Following the Person G meeting, Chenh submitted or caused to be submitted on behalf of Person G the MLC Application Form in order to implement the Person G superannuation advice.
240. On about 31 July 2014, unbeknownst to Person G, a superannuation fund in Person G's name was open with MLC, and the sum of \$179,985.22, being the full amount of Person G's superannuation held with CBA, was rolled over from CBA to MLC.
241. Person G did not receive a copy of the Person G SOA, or any other written statement of advice from Chenh or NSG before the Person G superannuation advice was implemented.
242. Person G received a copy of the Person G SOA on 27 August 2014 following a conversation with an NSG employee.
243. On 28 August 2014 Person G lodged a formal complaint with NSG.
244. On 29 October 2014 Person G received a further SoA.

Post-implementation events

245. Shortly after the rollover of her funds from CBA to MLC, Person G received an account statement from MLC as at 30 July 2014, which showed that:
  - (a) an annual adviser service fee of 0.55 per cent had been charged to her superannuation account with MLC; and
  - (b) a one-off adviser fee of \$3,851.83 had been deducted from the balance of her superannuation account with MLC (**the adviser fees**).
246. Shortly after Person G learnt of the adviser fees, she contacted MLC and informed them that the adviser fees had not been disclosed to Person G by Chenh and NSG, after which MLC agreed to waive, and did waive, the adviser fees.
247. In early August 2014, Person G received an account statement from MLC as at 1 August 2014, which showed that the balance in her superannuation had dropped from the rolled over amount of \$179,985.22 to \$178,520.94, being a reduction of \$1,464.28.
248. Subsequently, in August 2014:
  - (a) Person G contacted MLC's Investment Protection Department by telephone, and was advised by MLC that Person G was not eligible to have her funds in a capital protected investment because Person G was not yet 50 years of age at the time;
  - (b) Person G then contacted Chenh by telephone on two occasions about the drop in her superannuation balance at MLC, and Chenh advised Person G that MLC had made a mistake and that he would arrange for MLC to move Person G's superannuation from the Horizon 4 fund to the Horizon 2 fund which would preserve her principal; and
  - (c) Person G received a letter from Chenh dated 8 August 2014 which stated that there was an error with Person G's MLC account "in terms of its asset allocation not being placed in the appropriate option" but that this was now reversed and her funds had been moved from MLC Horizon 4 to MLC Horizon 2, which was a

“Capital Stable Portfolio”.

249. On or about 14 August 2014, Person G’s superannuation funds were rolled over from the MLC Horizon 4 to MLC Horizon 2 fund.
250. After her superannuation funds were rolled over from the Horizon 4 fund to the Horizon 2 fund, Person G spoke to Ms Heffernan at MLC, and was advised that she was not eligible for a capital protected fund as she was not yet 50 years of age, and that the switch to MLC Horizon 2 meant that Person G’s funds had been moved to a lower risk fund, but it would not protect the principal.
251. Following the telephone conversation referred to in the preceding paragraph, Person G spoke to Chenh and asked him to speak directly with MLC to sort out the issue of whether Person G was eligible for a capital protected superannuation fund with MLC.
252. Person G did not hear from Chenh again.
253. On around 20 October 2014, Person G rolled her superannuation of \$177,426.48 out of her MLC fund and into her HESTA fund, as she was not eligible to re-enter the CBA superannuation fund once she had rolled out of it.
254. On 23 October 2014, following a request by Person G, CBA advised Person G that had she left her superannuation with CBA, the balance of her fund would have been \$180,819.28 as at 16 October 2014.
255. Person G subsequently made a formal complaint to NSG, and was compensated by Chenh personally, in accordance with NSG’s internal policies and procedures, in the amount of \$3,378.02 as follows:
  - (a) the sum of \$2,558.74, being the difference in value of her CBA fund balance on 30 July 2014, and the value of her MLC Horizon 2 fund on 20 October 2014; and
  - (b) the sum of \$819.28 in lost investment earnings on her CBA superannuation account between the period July 2014 to October 2014.

Admissions of contraventions

Contraventions of ss 961B(1) and 961G by Chenh

256. By reason of the matters set out at paragraphs 227 to 255 above, Chenh did not act in the best interests of Person G in relation to his advice to Person G and has thereby breached s 961B(1) of the Act.
257. Further, NSG admits that the advice Chenh provided to Person G was not appropriate to Person G, in breach of s 961G of the Act, by reason that Person G’s CBA superannuation funds could not be placed in a capital-protected investment with MLC, when Person G’s objective was to protect the principal of her CBA superannuation.

Contraventions of s 961L by NSG

258. In providing the Person G superannuation advice, Chenh followed the new client advice process set out in paragraphs 22 to 28 above.



259. Further, at all material times during his engagement as an NSG Representative, Chenh:
- (a) was subject to NSG's training systems and practices as set out in paragraphs 29 to 50 above;
  - (b) was subject to the review of his work as an NSG Representative by Assured in May 2015, which identified problems with his compliance with financial services law as set out in paragraph 90 above; and
  - (c) was remunerated entirely by commission.
260. NSG admits that, by reason of the matters set out in paragraphs 22-122 and 258 to 259 above, NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that Chenh complied with s 961B(1) and s 961G of the Act in providing advice to Person G.

**(e) Contraventions relating to advice by Chenh to NSG client Person F**

Relevant conduct by Chenh with respect to Person F

Person F Meeting

261. On 24 November 2014, Chenh, as an NSG Representative, attended the home of Person F for a meeting to provide Person F with personal financial advice as a retail client (**Person F meeting**).
262. At the Person F meeting, Person F told Chenh that:
- (a) she held superannuation of approximately \$90,000 with TelstraSuper;
  - (b) she had life and disability insurance of approximately \$262,832.80 and income protection insurance of approximately \$5,173.06 per month through TelstraSuper;
  - (c) she and her husband [omitted] owned their home in Mentone outright; and
  - (d) she and her husband [omitted] had an investment property, which at the time was worth about \$500,000 and was subject to a small mortgage.
263. At the Person F meeting, Person F showed Chenh her recent TelstraSuper superannuation statement (**the Person F TelstraSuper Statement**), and her driver's licence, and Chenh took copies of these documents with his mobile telephone.
264. At the Person F meeting, Person F told Chenh that she was seeking advice about rolling over her TelstraSuper superannuation into a better performing fund, that she and her husband were interested in purchasing a second investment property, and that she did not want any insurance because she was being made redundant in a few weeks.
265. At the Person F meeting, Chenh acknowledged, by reference to the Person F TelstraSuper Statement, that Person F had life insurance, disability insurance and income protection insurance through her TelstraSuper superannuation fund.

266. At the Person F meeting, Chenh orally advised Person F to roll her existing superannuation in two parts into an IOOF superannuation fund, starting with an initial amount of \$8,000, because there were tax benefits associated with this approach (**Person F superannuation advice**).
267. In respect of the Person F superannuation advice, Chenh:
- (a) orally advised Person F that IOOF was a safe fund and had performed well, and that TelstraSuper was not a good performer;
  - (b) did not provide Person F with any information or documents comparing her existing superannuation funds with the recommended IOOF fund;
  - (c) did not suggest any alternative superannuation funds other than the IOOF fund; and
  - (d) did not provide any information about the fees and costs of the recommended IOOF fund.
268. At the Person F meeting, Chenh orally advised Person F that his services were free, that he did not receive a commission from IOOF and that there was no rollover fee for transferring her superannuation from TelstraSuper to IOOF.
269. After hearing Chenh's advice and recommendations, during the Person F meeting, Person F:
- (a) agreed to follow Chenh's recommendation to roll over her superannuation to an IOOF fund in two parts; and
  - (b) at Chenh's request signed a number of forms and documents, which were then retained by Chenh, being:
    - (i) an authority to proceed bearing the date 24 November 2014;
    - (ii) an incomplete document entitled 'Client Fact Finder' bearing the date 24 November 2014 (**Person F Fact Finder**); and
    - (iii) an incomplete document entitled 'Personal statement – Insurance through Superannuation' bearing the date 24 November 2014.

After the Person F meeting

270. Following the Person F meeting, Chenh:
- (a) completed or caused to be completed the documents referred to at paragraphs 269(b)(ii)-(iii) above and the following documents:
    - (i) a document entitled 'IOOF Application for Personal Superannuation – Form A' bearing the date 24 November 2014;
    - (ii) a document entitled 'IOOF Pursuit Focus – Form B' bearing the date 24 November 2014;
    - (iii) a document entitled 'IOOF Pursuit Focus – Form B' bearing the date 24 January 2015;

- (iv) a document entitled 'IOOF Binding Death Nomination – Form C' bearing the date 24 November 2014;
  - (v) a document entitled '36. Policy Declaration' bearing the date 24 November 2014;
  - (vi) an undated document entitled '37. Medical Evidence Authority';
  - (vii) an Australian Government form entitled 'Request to transfer whole balance of superannuation benefits between funds' dated 24 November 2014;
  - (viii) a document entitled 'Authority to Disclose and/or Receive information' bearing the date 24 December 2014;
  - (ix) an Australian Government Standard Choice Form bearing the date 24 November 2014; and
  - (x) a document entitled 'TAL Accelerated Protection Application Summary' bearing the date 3 December 2014;
- (b) copied or arranged to have copied Person F's signature on the documents referred to at paragraphs 270(a)(i)-(ix) above; and
- (c) arranged for another NSG employee, Jeromy Gratian, to sign the document entitled 'IOOF Binding Death Nomination – Form C' bearing the date 24 November 2014 purportedly as a witness of Person F's signature.
271. Following the Person F meeting, on or about 1 December 2014, Chenh obtained or caused to be obtained quotes from TAL, Macquarie and OnePath with respect to life insurance, disability insurance and income protection insurance.
272. Following the Person F meeting, Chenh prepared or caused to be prepared at NSG a document entitled 'Statement of Advice' for Person F bearing the date 24 October 2014 (**Person F SOA**), which was the same date as the Person F meeting and the forms set out at paragraphs 269(b)(i)-(iii) and 270(a)(i)-(x).
273. Following the Person F meeting, Chenh submitted or caused to be submitted on behalf of Person F the product application forms referred to at paragraphs 270(a)(i)-(x) above in order to implement the Person F superannuation advice as well as to take out life insurance and disability insurance on behalf of Person F with TAL, despite Person F stating at the Person F meeting that she did not want any insurance.
274. In about November 2015, a superannuation account in Person F's name was opened with IOOF.
275. On around 4 December 2014, Person F's superannuation in the amount of around \$103,090.61 held with TelstraSuper was rolled into her superannuation fund held with IOOF, despite the fact that Chenh had recommended to Person F at the Person F meeting to effect the rollover to IOOF in two separate transactions for tax reasons.
276. On around 8 December 2014, insurance policies in Person F's name were taken out with TAL for life insurance and disability insurance of \$350,000 and income protection insurance of \$3,750 per month at a cost of \$5,143.68

per year or \$428.64 per month.

277. Person F did not receive a copy of the Person F SOA, or any other written statement of advice from Chenh or NSG in relation to Chenh's advice and product recommendations.
278. Person F was not advised by Chenh, prior to Chenh taking out life insurance, disability insurance and income protection insurance in Person F's name, that he proposed to do so.

Consequences of advice

279. In the period between around 4 December 2014 and around 30 June 2015:
- (a) Person F paid \$3,000.48 in insurance premiums to TAL out of her IOOF fund for life insurance, disability insurance and income protection insurance taken out in her name by Chenh; and
  - (b) the balance of Person F's superannuation which was rolled into the IOOF fund had decreased by \$5,077.83 to \$98,012.78.

Admissions of contraventions

Contraventions of ss 961B(1) and 961G by Chenh

280. By reason of the matters set out at paragraphs 261 to 279 above, Chenh did not act in the best interests of Person F in relation to his advice to Person F and has thereby breached s 961B(1) of the Act.
281. Further, NSG admits that the advice Chenh provided to Person F was not appropriate to Person F, in breach of s 961G of the Act, by reason of the following matters:
- (a) Person F did not require life insurance, disability insurance and income protection insurance, particularly in circumstances where she was about to be made redundant; and
  - (b) by paying insurance premiums out of her IOOF superannuation, Person F's superannuation was being depleted.

Contraventions of s 961L by NSG

282. In providing advice to Person F, Chenh followed the new client advice process set out in paragraphs 22 to 28 above.
283. Further, at all material times during his engagement as an NSG Representative, Chenh:
- (a) was exposed to NSG's training systems and practices as set out in paragraphs 29 to 50 above; and
  - (b) was remunerated entirely by commission.
284. NSG admits that, by reason of the matters set out in paragraphs 22-122 and 282-283 above, NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that Chenh complied with ss 961B(1) and 961G of the Act in providing advice to Person F.

**(f) Contraventions relating to advice by Heneric to NSG client Person H**

**Relevant conduct by Heneric with respect to Person H**

**Person H meeting**

285. On 20 August 2013, Heneric, as an NSG Representative, attended the home of Person H for a meeting to provide Person H with personal financial advice as a retail client (**Person H meeting**).
286. At the Person H meeting, Person H told Heneric that:
- (a) she had approximately \$113,594 in superannuation held with the Health Industry Plan Superannuation Fund (**HIP Super Fund**);
  - (b) she had accumulated pension funds of approximately £5,000 held in the United Kingdom (**UK pension funds**);
  - (c) she was concerned that she did not have enough superannuation to retire on and she was concerned to preserve her existing superannuation;
  - (d) she had life and disability insurance within the HIP Super Fund which provided a total benefit amount of \$23,160 at a monthly premium cost of \$33.83 per month;
  - (e) her annual salary was approximately \$140,000 and her monthly income after tax was approximately \$6,800; and
  - (f) she had approximately \$47,000 in savings, held approximately \$400,000–\$500,000 in equity in her home and had a mortgage of \$500,000, and her monthly mortgage repayments were approximately \$3,400.
287. At the Person H meeting, Person H told Heneric that:
- (a) her financial objective was to roll her existing Australian superannuation into a fund that would accept her pension from the United Kingdom; and
  - (b) she did not want to take out life insurance or income protection insurance, as insurance was not a financial priority for her, and in the event of her death there was sufficient equity in her home so that her adult children could sell her home to pay her debts.
288. At the Person H meeting, Heneric orally advised Person H:
- (a) to roll all of her existing superannuation held with the HIP Super Fund into a fund operated by IOOF (**Person H superannuation advice**); and
  - (b) to take out life and disability insurance (**Person H insurance advice**).
289. In respect of the Person H superannuation advice, Heneric:
- (a) orally advised Person H that IOOF was a suitable fund that would accept her UK pension funds;
  - (b) did not provide Person H with any information or documents

- comparing her HIP superannuation fund with the recommended IOOF fund;
- (c) did not suggest any alternative superannuation funds other than the IOOF fund; and
  - (d) did not provide any information about the fees and costs of the recommended IOOF fund.
290. In respect of the Person H insurance advice, Heneric:
- (a) orally advised Person H that in order for her to rollover her UK pension fund into an Australian superannuation fund, IOOF required her to take out an insurance policy;
  - (b) did not identify or recommend a particular insurance provider;
  - (c) did not discuss with Person H, or provide any oral advice to her, about the appropriate level of insurance cover; and
  - (d) did not provide any information about the fees and costs of any policy.
291. At the Person H meeting, Heneric did not provide Person H with any information about the commission and fees payable to Heneric or NSG in relation to his advice and recommendations.
292. After hearing Heneric's advice and recommendations during the Person H meeting, Person H:
- (a) agreed to follow Heneric's recommendations with respect to superannuation and insurance;
  - (b) instructed Heneric to take out a life and disability insurance policy that would meet the requirements of IOOF and had the lowest premiums available; and
  - (c) at Heneric's request, signed a number of incomplete forms and documents, which were then retained by Heneric, being:
    - (i) an incomplete document entitled Client Fact Finder bearing the date 20 August 2013 (**Person H Fact Finder**);
    - (ii) an incomplete document entitled Personal Statement – Insurance Through Superannuation dated 20 August 2013; and
    - (iii) an incomplete document entitled TAL Accelerated Protection Application Summary (**TAL Application**).

After the Person H meeting

293. Following the Person H meeting, Heneric completed or caused to be completed the forms referred to at paragraph 292(c) above.
294. Following the Person H meeting, Heneric prepared or caused to be prepared at NSG a document entitled Statement of Advice bearing the date 20 August 2013 (**Person H SOA**), which was the same date as the Person H meeting, and the incomplete forms signed by Person H and set out at paragraph 292(c) above.

295. Following the Person H meeting, Heneric submitted or caused to be submitted on behalf of Person H application forms and documents, including the TAL Application, in order to implement the Person H superannuation advice and the Person H insurance advice.
296. On about 27 August 2013, a superannuation account in Person H's name was opened with IOOF.
297. On about 30 August 2013, TAL wrote to Heneric at NSG stating that Person H's premium for life and TPD insurance had increased from \$399.60 per month to \$523.72 per month because of her pre-existing osteoporosis.
298. On about 6 September 2013, a policy in Person H's name was taken out with TAL for life and disability insurance of \$200,000 at a cost of \$6,284.64 per year.
299. On about 12 September 2013, Person H's superannuation held with the HIP Super Fund was rolled into her new IOOF fund.
300. Person H did not receive a copy of the Person H SOA, or any other written statement of advice from Heneric or NSG either prior to agreeing to implement the Person H superannuation advice and the Person H insurance advice, or at all.
301. Person H was not advised by Heneric that her insurance premiums had increased by from \$399.60 per month to \$523.72 per month because of her pre-existing osteoporosis.

The telephone conversation

302. About 7 months after the Person H meeting, in about March 2014, Heneric contacted Person H by telephone (**the telephone conversation**) and had a conversation in which he advised that IOOF would not accept her UK pension fund, and recommended that she roll over her superannuation to Macquarie (**revised Person H advice**).
303. Heneric did not otherwise seek or obtain updated information or instructions from Person H about her objectives, financial situation, or needs.
304. In respect of the revised Person H advice, Heneric:
  - (a) did not provide Person H with any information or documents comparing her existing IOOF superannuation fund with the recommended Macquarie fund;
  - (b) did not suggest any alternative funds other than the Macquarie fund; and
  - (c) did not provide any information about the fees and costs of the recommended Macquarie fund.
305. Heneric did not provide Person H with any information about the commission and fees payable to Heneric or NSG in relation to the revised Person H advice and recommendations, during the telephone conversation or afterwards.
306. After hearing Heneric's advice and recommendations given in the telephone conversation, Person H agreed to follow Heneric's recommendations.

307. Shortly after the telephone conversation, Heneric posted a number of forms and documents to Person H, and then telephoned her and instructed that the paperwork needed to be completed urgently, and said that she should sign the forms and he would collect them in person from her home.
308. Person H signed a number of incomplete forms and documents, which were collected and retained by Heneric, including a document entitled 'Personal Statement – Insurance Through Superannuation' dated 1 April 2014 (**2014 Personal Statement**).

After the telephone conversation

309. Following the telephone conversation, Heneric prepared or caused to be prepared at NSG a document entitled 'Statement of Advice' for Person H bearing the date 1 April 2014 (**Revised Person H SOA**), which was the same date as the date on which Heneric collected a number of forms from Person H's home as set out in paragraph 308 above, and the 2014 Personal Statement signed by Person H.
310. On about 22 April 2014, a superannuation account in Person H's name was opened with Macquarie.
311. On about 23 April 2014, a policy in Person H's name was taken out with Macquarie for life and disability insurance of \$200,000 and \$160,000 respectively at an annual premium cost of \$4,442.54.
312. On about 2 May 2014, Person H's IOOF superannuation of \$116,587.63 was rolled into the Macquarie fund.
313. On about 5 June 2014, Person H's UK pension funds of \$11,036.85 were rolled into the Macquarie fund.
314. Person H did not receive a copy of the Revised Person H SOA, or any other written statement of advice from Heneric or NSG prior to agreeing to implement the revised Person H superannuation advice, or prior to Heneric taking out insurance with Macquarie on her behalf.

Consequences of advice

315. In the period between 27 August 2013 and 29 April 2014, Person H:
  - (a) received employer contributions of \$5,536.10 to her IOOF superannuation fund;
  - (b) paid adviser fees of \$5,252.27 from her IOOF superannuation fund, which included a \$4,657.39 upfront member advice fee and ongoing member advice fees of \$357.62; and
  - (c) paid a total of \$3,666.04 in insurance premiums from her IOOF superannuation fund.
316. In the period between 22 April 2014 and 23 April 2015, Person H:
  - (a) received employer contributions of \$5,560.64 to her Macquarie superannuation fund;
  - (b) paid adviser fees of \$690.15 from her Macquarie superannuation fund; and
  - (c) paid a total of \$3,915.50 in insurance premiums from her Macquarie



superannuation fund.

Admissions of contraventions

Contraventions of ss 961B(1) and 961G by Heneric

317. By reason of the matters set out in paragraphs 285 to 316 above, Heneric did not act in the best interests of Person H in relation to his advice to Person H and has thereby breached s 961B(1) of the Act.
318. Further, NSG admits that the advice Heneric provided to Person H was not appropriate to Person H, in breach of s 961G of the Act, by reason of the following matters:
- (a) Person H's UK pension funds were not capable of being rolled over to IOOF to achieve Person H's objective of consolidating her Australian and UK superannuation funds;
  - (b) Person H did not wish to take out life and disability insurance; and
  - (c) by paying the insurance premiums out of her IOOF and then Macquarie funds, Person H's superannuation was being depleted in circumstances where she was concerned she did not have adequate or sufficient superannuation and wanted to preserve the balance.

Contraventions of s 961L

319. In providing the Person H superannuation advice, the Person H insurance advice, and the revised Person H advice, Heneric followed the new client advice process set out in paragraphs 22 to 28 above.
320. Further, at all material times during his engagement as an NSG Representative, Heneric:
- (a) was subject to NSG's training systems and practices as set out in paragraphs 29 to 50 above; and
  - (b) was remunerated entirely by commission, after being paid an initial retainer of \$30,000 in his capacity as a trainee.
321. NSG admits that, by reason of the matters set out in paragraphs 22-122 and 319-320 above, NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that Heneric complied with ss 961B(1) and 961G of the Act in providing advice to Person H.

**(g) Contraventions relating to advice by Trinh to NSG client Person A**

Relevant conduct by Trinh with respect to Person A

Person A Meeting

322. On 19 July 2013, Trinh, as an NSG Representative, attended the home of Person A for a meeting to provide Person A with personal financial advice as a retail client (**the Person A meeting**).
323. At the Person A meeting, Person A told Trinh that:
- (a) she had an annual gross income of approximately \$66,000;
  - (b) she held superannuation of at least \$52,078 across a number of

different superannuation funds which included Mercer, OnePath and other funds the names and details of which she could not recall;

- (c) she and her husband, [omitted], owned their home, which had a value of approximately \$800,000 and which was subject to a mortgage of approximately \$300,000; and
- (d) she and [omitted] owned an investment property in Victoria which had a value of approximately \$420,000 that was also subject to a mortgage, the amount of which Person A did not recall at the time.

324. At the time of the Person A meeting, Person A, unbeknownst to her had:

- (a) an AMP Retirement Savings superannuation fund, which included life insurance of \$1,972.08;
- (b) an AMP Super Directions superannuation fund, which included life insurance and disability insurance of \$1,296.26;
- (c) life insurance and disability insurance of \$143,031.95 included in her Mercer superannuation fund at a cost of \$300 per year; and
- (d) life insurance and disability insurance of \$23,198.19 included in her OnePath superannuation fund.

325. At the Person A meeting, Person A provided Trinh with:

- (a) a Mercer superannuation statement dated 30 June 2012 (**the Person A Mercer Statement**), which showed that she had the insurance referred to at paragraph 324(c) above; and
- (b) a OnePath superannuation statement dated 1 August 2012 (**the Person A OnePath Statement**), which showed that she had the insurance referred to at paragraph 324(d).

326. At the Person A meeting, Trinh orally advised Person A to:

- (a) roll over all of her existing superannuation into a fund operated by Macquarie (**Person A superannuation advice**); and
- (b) take out life and disability insurance in the sum of \$300,000 with Macquarie (**Person A insurance advice**).

327. In respect of the Person A superannuation advice, Trinh:

- (a) orally advised Person A that her superannuation was not working for her;
- (b) orally advised Person A that he recommended a rollover of Person A's superannuation funds to Macquarie because it was a fund that had the best returns;
- (c) orally informed Person A that he could perform a lost super search with respect to other superannuation funds held by Person A and consolidate her superannuation into one fund;
- (d) did not provide Person A with any information or documents comparing her existing superannuation funds with the recommended Macquarie fund;

- (e) did not discuss whether there may be a possibility of trying to get a better return using Person A's existing superannuation funds;
  - (f) did not suggest any alternative superannuation funds other than the Macquarie fund; and
  - (g) did not provide any information about the fees and costs of the recommended Macquarie fund.
328. In respect of the Person A insurance advice, Trinh:
- (a) orally advised Person A that any insurance premiums would be paid out of Person A's superannuation;
  - (b) did not advise Person A that she already held life insurance and disability insurance through her existing OnePath and Mercer superannuation funds;
  - (c) did not discuss the option of taking out additional insurance with Person A's existing superannuation funds;
  - (d) did not discuss the option of paying for insurance directly rather than having premiums deducted from Person A's superannuation;
  - (e) did not explain how he calculated the recommended insurance cover of \$300,000;
  - (f) did not suggest any alternative insurance providers;
  - (g) did not explain that the premiums payable in respect of insurance would deplete Person A's superannuation;
  - (h) did not compare Person A's existing insurance with the recommended insurance with Macquarie;
  - (i) did not otherwise explain his reason for advising Person A to take out insurance with Macquarie; and
  - (j) did not provide any information about the fees and costs of the recommended Macquarie insurance.
329. At the Person A meeting, Trinh did not provide Person A with any information about the commission and fees payable to Trinh or NSG in relation to his advice and recommendations.
330. After hearing Trinh's advice and recommendations, during the Person A meeting, Person A:
- (a) agreed to follow Trinh's recommendations to roll over her superannuation to Macquarie and to take out insurance through the Macquarie super fund; and
  - (b) at Trinh's request, signed a number of incomplete forms and documents, which were then retained by Trinh, being:
    - (i) an authority to proceed bearing the date 19 July 2013;
    - (ii) an incomplete document entitled Client Fact Finder bearing the dates 18 June 2013 and 19 July 2013 (**Person A Fact Finder**);

- (iii) an incomplete document entitled 'Personal statement – Insurance through Superannuation' bearing the date 19 July 2013;
- (iv) an incomplete 'Australian Taxation Office – Standard Choice Form' bearing the date 19 July 2013;
- (v) two incomplete 'Australian Government – Request to transfer whole of balance of superannuation benefits between funds' forms bearing the date 19 July 2013;
- (vi) two incomplete NSG forms entitled 'Authority to disclose and/or receive information' bearing the date 19 July 2013;
- (vii) an incomplete Macquarie Super Accumulator Application Form bearing the date 19 July 2013; and
- (viii) an incomplete Macquarie Life – New Business Application bearing the date 19 July 2013.

After the Person A meeting

331. Following the Person A meeting, Trinh:
- (a) completed or caused to be completed the documents listed in paragraphs 330(b)(ii)-(viii);
  - (b) arranged for another NSG Representative, Adrian Chenh, to sign the Macquarie Super Accumulator Application Form bearing the date 19 July 2013 purportedly as a witness of Person A's signature; and
  - (c) copied or arranged to have copied Person A's signature on another part of the Macquarie Life – New Business Application form bearing the dated 19 July 2013, which had already been signed by Person A.
332. Following the Person A meeting, on or about 19 July 2013, Trinh obtained or caused to be obtained a quote from Macquarie for life insurance.
333. Following the Person A meeting, Trinh prepared or caused to be prepared an NSG document entitled "Statement of Advice" for Person A bearing the date 19 July 2013 (**Person A SOA**), which was the same date as the Person A meeting and the incomplete forms signed by Person A and listed at paragraph 330(b)(ii)-(viii) above.
334. Following the Person A meeting, Trinh submitted or caused to be submitted on behalf of Person A the product application forms referred to at paragraphs 330(b)(ii)-(viii) above in order to implement the Person A superannuation advice and the Person A insurance advice, save that, despite the fact that Trinh orally informed Person A at the Person A meeting that he would identify and consolidate all her superannuation funds, Trinh did not include Person A's AMP funds in the rollover to Macquarie.
335. On or around 5 August 2013, the insurance lodgement for Person A was rejected by NSG's Verifications Department on the grounds that the Personal Statement needed to be corrected. The lodgement was later accepted after the issue was resolved.
336. On about 12 August 2013, a policy in Person A's name was taken out with Macquarie for life insurance and disability insurance in the amount of

\$300,000 at a premium of \$123.72 per month plus a monthly fee of \$7.64.

337. Further, on about 26 August 2013, a superannuation account in Person A's name was opened with Macquarie and Person A's superannuation funds held with OnePath in the amount of \$26,957.18 and superannuation funds held with Mercer in the amount of \$40,189.51 were rolled over to Macquarie.
338. Person A did not receive a copy of the Person A SOA, or any other written statement of advice, from Trinh or NSG, prior to agreeing to implement the Person A superannuation advice and the Person A insurance advice, or at all.
339. At no time was Person A's superannuation held with her two AMP funds rolled into the Macquarie fund.
340. Person A was not advised by Trinh that she held superannuation with two AMP funds, either prior to agreeing to implement the Person A superannuation advice, or at all.
341. Person A was not advised by Trinh that she already held life insurance and disability insurance through her existing superannuation funds, either prior to agreeing to implement the Person A insurance advice, or at all.

#### Consequences of advice by NSG

342. As a result of Trinh's advice, on around 3 September 2012, Person A paid an "adviser fee" of \$2,348 to NSG out of her Macquarie fund, as well as several monthly adviser fees of \$30.
343. Further, as a result of Trinh's advice, in the period between around August 2013 and around August 2015, Person A paid \$3,093 in insurance premiums out of her Macquarie fund.

#### Admissions of contraventions

##### Contraventions of ss 961B and 961G by Trinh

344. By reason of the matters set out at paragraphs 322 to 343, NSG admits Trinh did not act in the best interests of Person A in relation to his advice to Person A and has thereby breached s 961B(1) of the Act.
345. Further, NSG admits the advice Trinh provided to Person A was not appropriate to Person A, in breach of s 961G of the Act, by reason of the following matters:
  - (a) prior to the implementation of Trinh's advice, Person A had:
    - (i) life insurance and disability insurance of \$23,198.19 within her existing OnePath superannuation;
    - (ii) life insurance and disability insurance of \$143,031.95 at a cost of \$300 per year within her existing Mercer superannuation;
  - (b) the insurance taken out with Macquarie was life and disability insurance of \$300,000 at a cost of \$1,484.64 per year;
  - (c) by paying the insurance premiums out of her superannuation, Person A's superannuation was being depleted; and
  - (d) Trinh did not identify and roll over Person A's superannuation held

with two AMP funds.

Contraventions of s 961K(2) by NSG

346. NSG admits that NSG contravened s 961K(2) of the Act by reason that Trinh, acting as its representative other than an authorised representative, contravened s 961B(1) and s 961G of the Act in providing advice to Person A.

Contraventions of s 961L by NSG

347. In providing advice to Person A, Trinh followed the new client advice process set out in paragraphs 22 to 28 above.

348. Further, Trinh:

(a) at all material times during his engagement as an NSG Representative was subject to NSG's training systems and practices as set out in paragraphs 29 to 50 above; and

(b) provided advice to Person A while still being a trainee adviser and not yet an authorised representative of NSG within the meaning of the Act.

349. NSG admits that, by reason of the matters set out in paragraphs 22-122 and 347-348 above, NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that Trinh complied with ss 961B(1) and 961G of the Act in providing advice to Person A.

**(h) Contraventions relating to advice by Ozak to NSG client Person B**

Relevant conduct by Ozak with respect to Person B

Person B Meeting

350. On 20 August 2015, Ozak, as an NSG Representative, attended the home of Person B for a meeting to provide Person B with personal financial advice as a retail client (**the Person B meeting**).

351. At the Person B meeting, Person B told Ozak that:

(a) he was on a salary of approximately \$47,000 per year before tax;

(b) he had a car loan of \$15,000;

(c) he was living in the home owned by his mother;

(d) he was financially supporting his mother; and

(e) he did not have any savings.

352. At the time of the Person B meeting, Person B, to his knowledge, already had life insurance and disability insurance through his Australian Super superannuation fund.

353. At the Person B meeting, Person B provided Ozak with a copy of his Australian Super superannuation statement as at 30 June 2015, which referred to Person B having life insurance and disability insurance of \$55,000 at a cost of \$100 per year.

354. At the Person B meeting, Ozak orally advised Person B to take out income

protection insurance (**Person B insurance advice**).

355. In respect of the Person B insurance advice, Ozak:
- (a) orally advised Person B that the income protection insurance would be paid out of Person B's superannuation, that it would only cost \$100 per year and that Person B would not notice the cost;
  - (b) did not discuss any particular income protection insurance providers;
  - (c) did not discuss whether there was an option of taking out income protection insurance with Person B's existing Australian Super superannuation fund;
  - (d) did not discuss with Person B, or provide any oral advice to Person B, about the appropriate level of insurance cover;
  - (e) did not provide any information about the fees and costs of the recommended income protection insurance;
  - (f) did not provide any comparisons between products offered by different insurance providers; and
  - (g) did not give Person B copies of any quotes from insurance providers.
356. At the Person B meeting, Ozak told Person B that he was not paid a commission for his services and that "his boss pays him", but did not otherwise provide Person B with any information about the commission and fees payable to Ozak, or NSG in relation to his advice and recommendations.
357. After hearing Ozak's advice and recommendations, during the Person B meeting, Person B:
- (a) agreed to follow Ozak's recommendation to take out income protection insurance; and
  - (b) at Ozak's request, signed a number of incomplete forms and documents, which were then retained by Ozak, being:
    - (i) an incomplete document entitled Client Fact Finder bearing the date 20 August 2015 (**Person B Fact Finder**);
    - (ii) an incomplete document entitled 'Personal statement – Insurance through Superannuation' bearing the date 20 August 2015;
    - (iii) an incomplete TAL 'Accelerated Protection Application Form' bearing the dated 20 August 2015; and
    - (iv) an incomplete NSG document entitled 'Authority to Disclose and/or Receive Information' bearing the date 20 August 2015.

After the Person B meeting

358. Following the Person B meeting, Ozak, completed or caused to be completed the documents set out at paragraphs 357(b)(i)-(iv).
359. Following the Person B meeting, on or about 24 August 2014, Ozak obtained or caused to be obtained quotes for life insurance, disability insurance and

income protection insurance from Macquarie and AIA.

360. Following the Person B meeting, Ozak submitted or caused to be submitted on behalf of Person B the TAL 'Accelerated Protection Application Form' bearing the date 20 August 2015 in order to take out life insurance and disability insurance in Person B's name through TAL, despite the fact that Person B already had life insurance and disability insurance through his Australian Super superannuation fund.
361. On about 4 September 2015, unbeknownst to Person B, a sum of \$3,863 was transferred from Person B's Australian Super superannuation fund to TAL.
362. On about 8 September 2015, a policy in Person B's name was taken out with TAL for life insurance and disability insurance in the amount of \$300,000, at a cost of \$3,863 per year, but the policy did not include income protection insurance.
363. Person B did not receive any written statement of advice from Ozak or NSG, either prior to agreeing to implement the Person B insurance advice, or at all.
364. Person B was not advised by Ozak, prior to Ozak taking out life insurance and disability insurance with TAL in Person B's name, that he proposed to take out that insurance for Person B.

#### Consequences of advice

365. Later in around September 2015, following a request by Person B, TAL cancelled all insurance policies taken out in his name by NSG.
366. Further, in around December 2015, following a request by Person B, TAL repaid the sum of \$3,863 to Person B.
367. During the period when Person B was covered by insurance policies taken out in his name with TAL, Person B had life insurance and disability insurance through each of Australian Super and TAL, but did not have any income protection insurance.

#### Admissions of contraventions

##### Contraventions of ss 961B(1) and 961G by Ozak

368. By reason of the matters set out at paragraphs 350 to 367, Ozak did not act in the best interests of Person B in relation to his advice to Person B and has thereby breached s 961B(1) of the Act.
369. Further, NSG admits that the insurance advice Ozak implemented for Person B was not appropriate to Person B, in breach of s 961G of the Act, by reason that:
  - (a) Person B did not wish to take out additional life insurance or disability insurance and only wanted income protection insurance but Ozak nevertheless arranged for a new life and disability insurance policy to be taken out in Person B's name with TAL; and
  - (b) Person B wished to take out income protection insurance but Ozak did not arrange for an income protection insurance policy to be taken out in Person B's name.



Contraventions of s 961K(2) by NSG

370. NSG admits that NSG contravened s 961K(2) of the Act by reason that Ozak, acting as its representative other than an authorised representative, contravened ss 961B(1) and 961G of the Act in providing advice to Person B.

Contraventions of s 961L by NSG

371. In providing advice to Person B, Ozak followed the new client advice process set out in paragraphs 22 to 28 above.
372. Further, at all material times during his engagement as an NSG Representative, Ozak was subject to NSG's training systems and practices as set out in paragraphs 29 to 50 above.
373. NSG admits that, by reason of the matters set out in paragraphs 22-122 and 350-371 above, NSG contravened s 961L of the Act by failing to take reasonable steps to ensure that Ozak complied with ss 961B(1) and 961G of the Act in providing advice to Person B.