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Details of Filing

Document Lodged:	Statement of Agreed Facts
File Number:	VID707/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 29/11/2021 5:00:07 PM AEDT

A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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

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



Statement of Agreed Facts and Admissions

No. of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

WESTPAC BANKING CORPORATION (ACN 007 457 141)

AND OTHERS (According to the attached Schedule)

Respondents

A. INTRODUCTION

- 1 This Statement of Agreed Facts and Admissions (**SAFA**) is made for the purposes of s 191 of the *Evidence Act 1995* (Cth) (**Evidence Act**) jointly by the applicant (**ASIC**) and the respondents.
- 2 The SAFA relates to Proceedings to be commenced by ASIC against the respondents on 29 November 2021 (**Proceedings**). In the Proceedings, ASIC has sought declarations that the respondents contravened particular provisions of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and the *Corporations Act 2001* (Cth) (**Corporations Act**), and orders that they pay pecuniary penalties to the Commonwealth, as well as ancillary orders.
- 3 This document contains facts relevant to each of the contraventions alleged by ASIC and admitted by the respondents for the purpose of the Proceedings. The facts agreed to, and the admissions made, are agreed to and made solely for the purpose of the Proceedings and do not constitute any admission outside of the Proceedings.
- 4 For the purposes of the Proceedings only:
 - (a) the first, second, third, fourth, fifth, sixth and eighth respondents admit that they contravened s 12DI(3) of the ASIC Act;
 - (b) the first, second and third respondents admit that they contravened s 12CB(1) of the ASIC Act;
 - (c) the first respondent admits that it contravened s 962P of the Corporations Act;

- (d) the first, second, third, fourth, fifth, sixth and eighth respondents admit that they contravened s 912A(1)(c) of Corporations Act; and
- (e) the respondents admit that they contravened s 912A(1)(a) of the Corporations Act 2001, in particular respects as set out in Parts C and D of this SAFA.

B. THE PARTIES

- 5 ASIC is a body corporate which was established by s 7 of the *Australian Securities and Investments Commission Act 1989* (Cth) and continues by operation of s 261 of the ASIC Act. It is entitled to sue by reason of s 8(1)(d) of the ASIC Act.
- 6 The first respondent (**Westpac**) is a body corporate incorporated according to law and able to be sued in its own name. Westpac at all material times held Australian Financial Services Licence (**AFSL**) No 233714. Westpac is a major Australian bank. As at 30 September 2020, Westpac had a market capitalisation of \$61 billion with \$912 billion of total assets. Westpac had a net profit of \$2.29 billion (after tax) in the year ending 30 September 2020.
- 7 The second respondent (**Securitor**) is a body corporate incorporated according to law and able to be sued in its own name. Securitor at all material times held AFSL No 240687. At all material times since 9 December 2008, Securitor was a member of the group of companies in relation to which Westpac was the ultimate holding company.
- 8 The third respondent (**Magnitude**) is a body corporate incorporated according to law and able to be sued in its own name. Magnitude at all material times held AFSL No 221557. At all material times since 22 December 2008, Magnitude was a member of the group of companies in relation to which Westpac was the ultimate holding company.
- 9 Westpac, Securitor and Magnitude are referred to below collectively as the **Advice Licensees**.
- 10 The fourth respondent (**AAML**) is a body corporate incorporated according to law and able to be sued in its own name. AAML at all material times held AFSL No 240902. At all material times since 1 December 2008, AAML was a member of the group of companies in relation to which Westpac was the ultimate holding company.
- 11 The fifth respondent (**ACML**) is a body corporate incorporated according to law and able to be sued in its own name. ACML at all material times held AFSL No 240695. At all material times since 1 December 2008, ACML was a member of the group of companies in relation to which

Westpac was the ultimate holding company.

- 12 The sixth respondent (**BTFM**) is a body corporate incorporated according to law and able to be sued in its own name. BTFM at all material times held AFSL No 233724. At all material times since 31 October 2002, BTFM was a member of the group of companies in relation to which Westpac was the ultimate holding company.
- 13 The seventh respondent (**BTFM No. 2**) is a body corporate incorporated according to law and able to be sued in its own name. BTFM No. 2 at all material times held AFSL No 233720. At all material times since 1 June 2002, BTFM No. 2 was a member of the group of companies in relation to which Westpac was the ultimate holding company.
- 14 The eighth respondent (**BTPS**) is a body corporate incorporated according to law and able to be sued in its own name. BTPS at all material times held AFSL No 233715. At all material times since 31 October 2002, BTPS was a member of the group of companies in relation to which Westpac was the ultimate holding company.
- 15 AAML, ACML, BTFM, BTFM No. 2 and BTPS are referred to below collectively as the **SIPO Entities**.
- 16 The respondents are, and were at all material times, part of the Westpac Group.

C. FACTS

C1 Relevant Period and Penalty Period

- 17 Unless stated otherwise, the facts set out below relate to the following periods:

- (a) From December 2008 to 9 October 2019 (the **Relevant Period**).
- (b) From 30 November 2015 to 9 October 2019 (the **Penalty Period**).

C2 Outline of Conduct

- 18 The Proceedings concern the charging of advice fees by the Advice Licensees to the accounts of thousands of deceased customers for financial advice services that were not provided to the customer due to their death.
- 19 During the Relevant Period, the SIPO Entities (being entities issuing and operating financial products) deducted advice fees from the accounts of deceased customers and remitted the fees to the Advice Licensees. Where applicable, the SIPO Entities also deducted fees from the

accounts of deceased customers and remitted those fees to providers of financial advice external to the Westpac Group (**Non-Group Advice Licensees**)

20 The Advice Licensees received and retained, or passed on to their Authorised Representatives, advice fees deducted from the accounts of deceased customers and remitted by the SIPO Entities. The Advice Licensees also relevantly received and retained advice fees in respect of deceased customers, as deducted and remitted by entities outside of the Westpac Group that issued and operated financial products (**Non-Group SIPOs**). The Westpac Group has undertaken a remediation process in respect of those advice fees.

21 The respondents engaged in such conduct after having been notified of the death of the customer.

22 In 2018, the Westpac Group commenced a broad review and remediation process.

C3 Westpac's wealth management division – BT Financial Group

23 Westpac is, and was at all relevant times, a provider of a range of financial services across different divisions, including a wealth management division.

24 Since about 2002, the Westpac Group's wealth management division has consisted of entities within the BT Financial Group (**BTFG**).

25 The respondents are entities within BTFG, as set out below.

26 During the Relevant Period, BTFG provided financial products and services in relation to investments, superannuation, retirement, insurance and private banking. One of the services provided was personal financial advice. The business unit within BTFG responsible for the provision of financial advice services was known as BT Advice.

27 The BT Advice business unit included two further units:

- (a) A business unit known as BT Financial Advice (**BTFA**) which provided financial advice services through salaried advisers employed by Westpac and which operated under Westpac's AFSL; and
- (b) A business unit known as BT Group Licensees (**BTGL**) which provided financial advice services through third-party financial advisers acting as Authorised Representatives of Securitor and Magnitude. Securitor and Magnitude provided support services to their Authorised Representatives through a Practice Management team.

C4 The SIPO Entities

- 28 BTFG also comprised entities issuing and operating financial products provided by particular entities within the group. Those entities included the SIPO Entities.
- 29 The financial products issued by the SIPO Entities were of three overlapping but separate types, namely:
- (a) **Superannuation**, being superannuation products (excluding superannuation platform products);
 - (b) **Platform Products**, being investor directed portfolio services (**IDPS**), IDPS-like schemes and superannuation ‘wrap’ style platform products (that is, products that enable customers to select particular underlying investments from a menu of accessible investments); and
 - (c) **Investment Products**, being registered managed investment schemes (other than IDPS-like schemes) operated by a given **Responsible Entity**.
- 30 Relevant products are specified in the tables below:

Superannuation (unitised products excluding superannuation platform products)

Trustee	Fund	Products/Sub-Fund
BTFM	Retirement Wrap	<ul style="list-style-type: none"> BT Lifetime Super – Employer Plan (LSEP) [corporate super products]
	BT Lifetime Super	<ul style="list-style-type: none"> BT Lifetime Super – Personal Super* BT Lifetime Super – Flexible Pension*
	Advance Retirement Suite	<ul style="list-style-type: none"> Advance Super Account Advance Allocated Pension Account
BTFM No. 2	BT Classic Lifetime	<ul style="list-style-type: none"> BT Classic Lifetime – Flex Pension* BT Classic Lifetime – Personal Super*

*These products have been Successor Fund Transferred to BT Super/BT Super for Life

Platform Products (IDPS, IDPS-like schemes and superannuation platform products)

Entity	Fund	Product / Platform	Type of product
BTPS (IDPS Operator)	N/A	<ul style="list-style-type: none"> • BT Wrap (including badges) • BT Wrap Essentials (including badges) • BT Panorama Investments (including badges) 	IDPS
ACML (IDPS Operator)	N/A	<ul style="list-style-type: none"> • Asgard eWRAP Investment (including badges) • Asgard Infinity eWRAP Investment (including badges) 	IDPS
BTFM (Responsible Entity) and ACML (Administrator)	Asgard Independence Plan – Division 5 (ARSN 088 579 622)	<ul style="list-style-type: none"> • Asgard Elements Investment 	IDPS-like
BTFM (RSE licensee/trustee) and BTPS (Administrator)	Retirement Wrap	<ul style="list-style-type: none"> • BT Panorama Super (including badges) • BT SuperWrap (including badges) – Personal Super, Pension (including TTR), Term Allocated Pension;* • BT SuperWrap Essentials (including badges) – Personal Super, Pension (including TTR), Term Allocated Pension* 	Superannuation platform products
BTFM (RSE licensee/trustee) and ACML (Administrator)	Asgard Independence Plan – Division 2^	<ul style="list-style-type: none"> • Asgard eWRAP Super, Pension, Term Allocated Pension • Asgard Infinity eWRAP Super, Pension • Asgard Elements Super, Pension, Term Allocated Pension 	Superannuation platform products

		<ul style="list-style-type: none"> • Asgard Managed Profiles and Separately Managed Accounts (Master Trust) Super/Allocated Pension • Asgard Employee Super Account (AESAs) [corporate plan] 	
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* Up until February 2011, the Trust Company (Superannuation) Limited was the trustee of BT SuperWrap. After February 2011, BTFM became the trustee.

^ Up until 30 June 2013, ACML was the trustee for the Asgard superannuation products. After that date, BTFM took over as trustee, as well as RE of the IDPS-like products.

Investment Products

Responsible Entity	Scheme
BTFM & BTFM No. 2	<ul style="list-style-type: none"> • BT Investment Fund
BTFM No. 2	<ul style="list-style-type: none"> • Asgard Managed Profiles (SMAF) – Investment (including Elements Investment and Asgard Investment Funds Account)
AAML	<ul style="list-style-type: none"> • Advance Australian Shares Multi-Blend Fund (Retail Class) • Advance Growth Multi-Blend Fund (Retail Class) • Advance Defensive Multi-Blend Fund (Retail Class) • Advance Moderate Multi-Blend Fund (Wholesale Class)

C5 The Payment of Advice Fees

31 Customers receiving financial advice services from Westpac, Securitor or Magnitude (including through their Authorised Representatives), and whose accounts were charged advice fees after notification of their death, are referred to as **Affected Members**.

32 Affected Members had entered into an arrangement of one of two kinds.

33 Some of the Affected Members had entered into an arrangement with Westpac whereby a Westpac employed adviser was to provide ongoing financial advice services (which comprised or included personal financial advice) to the customer.

- 34 Other Affected Members had entered into an arrangement with an Authorised Representative of Securitor or Magnitude, whereby the Authorised Representative was to provide such services on behalf of Securitor or Magnitude.
- 35 Pursuant to the arrangement, the relevant Advice Licensee – in the case of Westpac – or its Authorised Representative – in the case of Securitor and Magnitude – charged fees to the customer over a period of more than 12 months for the provision of ongoing financial advice services (which comprised or included personal financial advice) to the customer. The services typically included meeting with the customer to conduct a review of their objectives, financial situation and needs and the regular provision of market information. The customer could contact their adviser for relevant assistance and advice when required. Affected Members entered into the arrangement in tandem with investing in or acquiring a financial product:
- (a) issued by one of the SIPO Entities; and/or
 - (b) issued by a Non-Group SIPO.
- 36 Pursuant to an instruction and authorisation provided to the SIPO Entity (or Non-Group SIPO) by the customer, the monthly fees that the customer was required to pay (to the relevant Advice Licensee) for the ongoing financial advice services were deducted by the relevant SIPO Entity (or Non-Group SIPO) from the customer's product account and remitted to the Advice Licensee.
- 37 The SIPO Entities also provided financial products to financial advice clients of Non-Group Advice Licensees.
- 38 Customers receiving financial advice from Non-Group Advice Licensees (including through their Authorised Representatives), and whose accounts were charged advice fees after notification of their death, are referred to as **Non-Group Affected Members**.

C6 The Contravening Conduct

Affected Members

- 39 Upon the death of an Affected Member, the ongoing advice arrangement terminated; the personal advice services could no longer be provided to the Affected Member.
- 40 Whilst the personal advice services could no longer be provided to the Affected Member after death, the SIPO Entity (or Non-Group SIPO) continued to deduct fees from the Affected Member's account and remit those fees to the relevant Advice Licensee, in circumstances where

the relevant SIPO Entity and/or the relevant Advice Licensee had been informed that the customer was deceased.

- 41 During the Relevant Period, the Advice Licensees charged and received fees from Affected Members' accounts (as held by a SIPO Entity or Non-Group SIPO, as applicable), in the above circumstances and in the amount of \$3,936,291.95. The estates of 3,387 customers were affected.
- 42 During the Penalty Period up to 9 October 2019, the Advice Licensees accepted fees from Affected Members' accounts (in relation to a product issued by a SIPO Entity or Non-Group SIPO, as applicable), in these circumstances and in the amount of \$1,427,688.88 (again, notwithstanding having been informed that the customer was deceased). The estates of 1,417 customers were affected.
- 43 A breakdown between the Advice Licensees is set out in **Annexure A**.
- 44 During the Relevant Period, the SIPO Entities deducted fees from Affected Member accounts, and remitted the fees to Advice Licensees, in the amount of \$2,602,673.85. When remitting the fees, the SIPO Entities knew that the fees were for the provision of ongoing financial advice services to the customer but that the customer was deceased. The estates of 2,971 customers were affected.
- 45 Of this, during the Penalty Period up to 10 September 2018, the SIPO Entities deducted fees from Affected Member accounts, and remitted the fees to Advice Licensees, in the amount of \$869,349.32. The estates of 1,209 customers were affected.
- 46 A breakdown between the SIPO Entities is set out in **Annexure B** (under 'Remitted to Advice Licensees').

Non-Group Affected Members

- 47 Upon the death of a Non-Group Affected Member, the ongoing advice arrangement terminated; the personal advice services could no longer be provided to the Non-Group Affected Member.
- 48 Whilst the advice services could no longer be provided to the Non-Group Affected Member after death, the SIPO Entity continued to deduct monthly fees from the Non-Group Affected Member's account and remit those fees to the relevant Non-Group Advice Licensee, in circumstances where the relevant SIPO Entity had been informed that the customer was deceased.

- 49 During the Relevant Period, the SIPO Entities deducted fees from Non-Group Affected Member accounts, and remitted the fees to Non-Group Advice Licensees, in the amount of \$7,020,389.99. When remitting the fees, the SIPO Entities knew that the fees were for the provision of ongoing financial advice services to the customer but that the customer was deceased. The estates of 8,418 customers were affected.
- 50 Of this, during the Penalty Period up to 10 September 2018, the SIPO Entities deducted fees from Non-Group Affected Member accounts, and remitted the fees to Non-Group Advice Licensees, in the amount of \$3,019,376.61. The estates of 3,932 customers were affected.
- 51 A breakdown between the SIPO Entities is set out in **Annexure B** (under ‘Remitted to Non-Group Advice Licensees’).

C7 The Respondents’ Knowledge

- 52 From at least around April 2013, the Advice Licensees:
- (a) knew, including at senior management level, that:
 - i. advice fees ought to cease being charged upon receiving notification that a customer was deceased;
 - ii. the estates of Affected Members ought to be refunded advice fees charged after death;
 - and
 - (b) gave consideration, again including at senior management level, to steps to be taken to address the charging of advice fees to deceased customer accounts.
- 53 From at least around April 2013, a director of one of the Advice Licensees, Securitator, was informed about and knew the matters in paragraph 52 above.
- 54 From at least around April 2013, the SIPO Entities:
- (a) knew, including at senior management level, that fees for advice services were continuing to be paid from Affected Member accounts to advisers in certain circumstances where:
 - i. advice fees ought to cease being charged upon receiving notification that a customer was deceased;

- ii. the estates of Affected Members and Non-Group Affected Members ought to be refunded advice fees charged after death;

and

- (b) gave consideration, again including at senior management level, to steps to be taken to address the charging of advice fees to deceased customer accounts.

The Securitor Authorised Representative Complaint

- 55 In or around early February 2013, an adviser for Plaza Financial (an Authorised Representative of Securitor) raised a complaint with both ACML and Securitor that adviser fees had ceased to be paid to her from the Asgard eWrap Investments Account of her deceased client. The Asgard eWrap Investments is an IDPS product, and the query was raised by an adviser who was providing assistance to the estate of the deceased member. The payments had ceased because a general freeze had been applied by ACML across the client's investment account upon notification of her death, and this freeze had the effect that adviser fees were no longer automatically deducted and remitted to the adviser.
- 56 Following on from this complaint, a Senior Product Manager, eWrap, from ACML, sought legal advice in relation to the requirements for transacting on a deceased client's account.
- 57 On 20 February 2013, the Senior Product Manager, eWrap, from ACML, received internal legal advice from a lawyer, Counsel, BT Super and Investments, Product and Distribution Counsel and Secretariat, BTFG: WES.0010.0127.3617.
- 58 The respondents claim legal professional privilege (**privilege**) over that legal advice.
- 59 On 21 February 2013, the Senior Product Manager, eWrap, from ACML sent an email to the Practice Development Manager, NSW, ACT, Securitor and Licensee Select, BTFG. Copied in were the Team Manager, Estate and Claims Management, Platforms and Operations, BTFG, the Business Development Manager, ACML, the Distribution Support Officer, ACML, the Team Manager, Asgard, Operations Service Delivery, Platforms and Operations, BTFG, the Service Excellence, Account Executive, Customer Service Delivery, the Case Manager, Estate and Claims Management, ACML, and Matthew Englund (Managing Director Securitor and Licensee Select, Advice, BTFG; director of Securitor). The email summarised or forwarded the legal advice provided by the lawyer, Counsel, BT Super and Investments, Product and Distribution Counsel and Secretariat, BTFG: WES.0010.0395.8945 at .8946.

60 The respondents claim privilege over that legal advice.

61 The Senior Product Manager, eWrap, from ACML, concluded the email with: '*I'm happy to go back to Legal and challenge their advice*'.

62 At 9.15am on 22 February 2013, the Senior Product Manager, eWrap, ACML, sent an email to the Team Manager, Estate and Claims Management, Platforms and Operations, BTFG, a Super and Insurance Service Centre Manager, Super Service Centre, Customer Service Delivery, and the Case Manager, Estate and Claims Management, ACML. The email attached legal advice from another lawyer, a Counsel, BT Super & Investments Wealth Support, again in relation to the requirements for transacting on a deceased client's account: WES.0010.0395.8945.

63 The respondents claim privilege over that legal advice.

64 Within the email, the Senior Product Manager, eWrap, ACML, inter alia, stated:

Please see attached advice I received from [Counsel, BT Super & Investments Wealth Support] regarding the below case. To summarise where we're at with everything:

- We cannot deduct adviser fees from the account until we receive probate; and

- If the pending adviser fees currently recorded against the account relate to adviser fees that were established/set up while the investor was still alive, then these fees will need to be cancelled.

- Following the receipt of the probate, we can lift all restrictions on the account and the adviser can submit a new adviser fee request.

...

What this case has highlighted to me is that we need to amend our processes so that as soon as we're notified of an investor passing away (whether it'd be Investment and/or super/pension investor) we need to dial all adviser fees down to zero (and rebate commissions where applicable). I will get in touch with [Process Manager at Asgard Wealth Solutions] (or her boss) and discuss how to make this happen.

65 At 10.44am and 2.04pm on 22 February 2013, the Senior Product Manager, eWrap, ACML, sent further emails to Matthew Englund, Managing Director Securitator and Licensee Select, Advice, BTFG and director of Securitator, copying in the Practice Development Manager, NSW, ACT, Securitator and Licensee Select, BTFG. Within the emails, the Senior Product Manager, eWrap,

ACML, summarised the legal advice received from the lawyer, Counsel, BT Super & Investments Wealth Support: WES.0010.0396.0150.

- 66 The respondents claim privilege over these summaries of legal advice.
- 67 From 22 February to 26 March 2013, managers and lawyers of the respondents corresponded as to the requirements for transacting on a deceased client's account, and the amendment of process: WES.0010.0127.3606, WES.0010.0127.3617, WES.0010.0395.8945, WES.0010.0396.0150, WES.0010.0396.4293, WES.0010.0128.1419, WES.0010.0127.5435, WES.0010.0127.5449, WES.0010.0127.5456, WES.0010.0127.5469, WES.0010.0396.4362, WES.0010.0396.3029, WES.0010.0396.4293, WES.0010.0127.6652, WES.0010.0127.6690, WES.0010.0127.6692, WES.0010.0396.5201.
- 68 On or around 25 March 2013, the Head of Platforms within the SIPO Entities made a decision to allow the payment of adviser fees to the Securitator Authorised Representative, on the condition that ACML was provided with a copy of the will and instruction from the executors.
- 69 At 10.12am on 26 March 2013, the Head of Platforms sent an email to Matthew Englund, Managing Director, Securitator and Licensee Select, Advice, BTFG and director of Securitator, the Senior Product Manager, eWrap, ACML, a Counsel, Advice and Private Banking, BTFG, and others, indicating with reference to the Securitator Authorised Representative's complaint (WES.0010.0127.6690):

I have provided a response to this to [Senior Product Manager, eWrap, ACML] (around my acceptance of the business risk on condition we get a copy of will and instruction from the executors).

- 70 On 4 April 2013, a telephone conference was held between employees of the respondents to discuss the issues raised by the Securitator Authorised Representative's complaint. A subsequent email recording the matters discussed during the telephone conference was sent to the Practice Development Manager, NSW, ACT, Securitator and Licensee Select, BTFG, the Head of Platforms and a member of the Platforms and Operations GM Risk Forum, the Senior Manager, Superannuation and Insurance Service Centre, BTFG, the Senior Product Manager, eWrap, ACML, the Head of BT Super and Investments, Product and Distribution Counsel and Secretariat, the Team Manager, Estate and Claims Management, Platforms and Operations, BTFG, the Senior Manager, Complaints Team, Platforms and Operations, BTFG, Matthew Englund, Managing Director Securitator and Licensee Select, Advice, BTFG and director of

Securitor, the Senior Manager, Offer Strategy and Operations Management, BTFG and the Senior Case Director, Customer Experience and Insights, BTFG. This subsequent email recorded the following (WES.0010.0128.0584):

(a) The key issues raised included the following:

- *What are our processes regarding deceased estates – payment of advisor fees*
- *Are they [sic] system limitations or policy / legal decisions*
- *Is there consistency of approach across Asgard and BT Wrap*
- *What is the business risk – both financial and reputational*
- *What is the business opportunity – contestable FUM out of the \$80mill pa lost through deceased estates, intergenerational advice for advisors etc*

(b) The interim outcomes were noted as follows:

- *Current policy to not pay adviser fees (investment) appears to be policy derived from;*
 - o system limitations – cash account*
 - o legal opinion regarding termination of adviser relationship at death*
- *The above view does not take into account the estates ability to engage and pay professional advisors (eg solicitor, accountant etc) to assist with the estate*
- *We currently have a business risk decision set at \$50,000 which relates to documentation requirements and investment distributions*
- *As professional fees represent considerably less risk than capital distributions to beneficiaries, look to adopt a similar business risk policy to pay advice fees (subject to receipt of various documents – will, death certificate, signed instructions from executors)*
- *There is a business risk on paying advice fees, but also a business risk should we make assumption that adviser relationship is terminated – how can Asgard then resource appropriately to deal with and advise the estate, retention of FUM, policies which are less attractive than our competitors.*

(c) Action items were assigned as follows:

1. *[Senior Manager, Superannuation and Insurance Service Centre, BTFG] -*

review of the processes and policies between BT Wrap and Asgard to determine business consistency (subject to system constraints)

2. [Practice Development Manager, NSW, ACT, Securitor and Licensee Select, BTFG] - to email [Senior Manager, Superannuation and Insurance Service Centre, BTFG] feedback from [Securitor Authorised Representative] re the Deceased Estates team (done)

3. [Senior Manager, Superannuation and Insurance Service Centre, BTFG] and [Head of Platforms] to review business risk appetite

4. [Head of Platforms] (team) to review communications content from Asgard to the estate to see if re wording can assist retention

5. [Senior Manager, Superannuation and Insurance Service Centre, BTFG] - business risk policy assessment to determine if [sic] can adopt say \$50,000 advice fee payment limit in line with current business risk level

6. Review system limitations to determine what the fix would be

71 Throughout April 2013, the above individuals engaged in further communications as to the review of Platform processes with a view to continuing to charge advice fees upon the accounts of deceased clients: WES.0010.0128.1419, WES.0010.0128.1748.

72 The communications again included reference to legal advice, as to which the respondents claim privilege.

73 On 16 July 2013, the Senior Manager, Superannuation and Insurance Service Centre, BTFG sent an email to the Practice Development Manager, NSW, ACT, Securitor and Licensee Select, BTFG and the Head of Platforms: WES.0010.0398.2958. The email included:

My team had started to work through a comparison of business rules across BT Wrap and Asgard processes as they relate to deceased estates, but this was put on hold over May and June as we worked through some resourcing challenges and then the busy year-end period. I have asked [Team Manager, Estate and Claims Management, Platforms and Operations, BTFG] and [Acting Team Manager, Estate and Claims Management, Platforms and Operations, BTFG] to recommence this. As part of this we had asked for insight from advisors over key pain points – I haven't seen anything come through, so not sure what your thoughts are on how we best source this? In the absence of this, the guys are looking at our main processes.

The main issue raised from memory was around the freezing of accounts and inability to charge fees. In relation to eWrap investment, this was constrained by the construct of the product with the attached bank account, but for other products it is a business rule that could in theory be changed. [Senior Product Manager, eWrap, ACML] had taken this away for further consideration as this ultimately needs to be a Product call. I can see that [Team Manager, Estate and Claims Management, Platforms and Operations, BTFG] has followed her up today for any progress updates.

74 On 21 July 2013, the Head of Platforms forwarded the email to the Senior Product Manager, eWrap, ACML: WES.0010.0398.2958.

75 On 22 July 2013, the Senior Product Manager, eWrap, ACML, replied to the Head of Platforms: WES.0010.0398. 2958. She noted that the matter had been put on hold, but intended to return to the issue within the ‘next few weeks’:

I did find out that with the exception of eWRAP Investment, we allow (for all other products across Asgard and BT) for adviser fees to continue to be deducted when we get notified of an investor/member passing away. This goes against Legal’s view of what should happen.

76 Notwithstanding the matters referred to above, the broader review of Platforms processes as to transacting upon the accounts of deceased clients was not progressed. Instead, the SIPO Entities continued to deduct advice fees from deceased customer accounts and to remit the fees to Advice Licensees and Non-Group Advice Licensees.

The FoFA Reforms

77 The Advice Licensees also considered the requirements for transacting upon the accounts of deceased clients in the context of the FoFA reforms.

78 In or around March or April 2013, the ‘FoFA Project Team’ created a document titled “SGFP Service Package FAQs”: WES.0012.0020.4554. This document was prepared by the Advice Licensees, and addressed a number of frequently asked questions (FAQs), including those in relation to the “FDS Client Masterlist”. One FAQ was as follows:

Question 10: Some of the clients appearing on the Masterlist are now deceased. How can I get them removed?

Clients appear on the Masterlist as they are paying some sort of ongoing advice fee (no matter how small). The fees for Deceased clients should be switched off following normal business process. If you are providing ongoing advice to the estate, a new ongoing advice fee should be negotiated with the executor of the estate.

- 79 In April 2013, a Business Requirements Document (**BRD**) was prepared by the Advice Licensees, as part of a series of changes made in response to the June 2012 FoFA reforms: WES.0004.0016.0001. The document was reviewed and approved by the Senior Manager, Advice Design & Delivery, Practice Management, Advice & PB, BTFG (approval provided on behalf of the General Manager of Westpac Financial Planning, Advice, BTFG), the Senior Manager Planner Productivity, Para-Planning and Documentation, Practice Mgmt, Advice and PB, BTFG (approval provided on behalf of the Senior Manager Planner Productivity, Para-Planning and Documentation, Practice Mgmt, Advice and PB, BTFG by the Senior Manager, Operations Governance, Advice, Risk, BTFG), the Head of Practice Services, BT Select, BTFG, the State Manager SA, Securitator and Licensee Select, Advice, BTFG, the Senior Manager, Distribution Optimisation, Advice Development and Advocacy, Advice and PB, BTFG, the Project Manager, Advice, AIPW Systems, BTFG Technology, the Senior Product Manager AdviserNETGain, Platforms, BT Platforms & Operations, BTFG (approval provided by the Product Manager, Platforms, BT Platforms and Operations, BTFG on behalf of the Senior Product Manager AdviserNETGain, Platforms, BT Platforms & Operations, BTFG), the Manager Advice Process, Practice Management, Advice and PB, BTFG, the Consultant External, BT Select, BTFG, the Business Intelligence Specialist, Advice Development and Advocacy, Advice and PB, BTFG, the Senior Manager, Operations Governance, Advice, Risk, BTFG, the Senior Business Analyst, Advice, AIPW Systems, BTFG Technology, the Product Manager, Platforms, BT Platforms and Operations, BTFG, the Senior Manager, Advice, NSW/ACT, Retail Bank Channel, Advice and PB, BTFG, the Head of Business Operations, St George Financial Planning, Advice, BTFG, the Business Manager, Advice, BTFG, the Risk Advisor, Dealer Groups, Advice, Risk, BTFG, and the Business Analyst, BT Risk.
- 80 The BRD, titled ‘Business Requirements Document – FoFA Reporting’ (**2013 FoFA Reporting BRD**), addressed ongoing advice reporting requirements relating to fee disclosure statements (**FDSs**). The 2013 FoFA Reporting BRD covered a range of matters relating to ongoing advice obligations.
- 81 One of the controls proposed in the 2013 FoFA Reporting BRD was titled ‘DI2’, described as a monthly report to be distributed to Regional Managers (**RMs**) in the Westpac Financial Planning

and St George Financial Planning businesses, the purpose of which was described as being “[to] identify deceased customers with an active service package”. The report was described as capturing a range of data inputs, including, inter alia, customer names, status, date of death, service package start date and whether an ongoing advice fee had been received.

82 The 2013 FoFA Reporting BRD recorded an intention to introduce control DI2 as at July 2013.

83 On 22 April 2013, a Change Manager, FoFA Program, Financial Planning Stream, BTFG, sent an email to the Head of Business Operations, St George Financial Planning, Advice, BTFG, DL: STGFP RMs, the Head of Service Excellence Centres, BTFG, a Team Assistant, Financial Planning, BankSA, an Executive Assistant, Financial Planning, St George, a Team Assistant, BTFA, Westpac Group, the Head of Distribution, St George Financial Planning, a Customer Experience Principal, Westpac Group, and a Regional Manager, Advice, Practice Manager, Advice, BTFG: WES.0010.0250.2836.

84 The email attached a presentation titled ‘FoFA – FDS Client Masterlist & Service Tracking Reporting - RM Sales Meeting presentation’: WES.0010.0250.2837. The presentation addressed an FDS Client Masterlist which provided details of ‘all ongoing advice arrangement clients who will receive an FDS from 1 July 2013’. Under the heading ‘Recent Issues Identified with the Masterlist’ it was noted that:

- Deceased clients - Planners need to switch off the fee following normal business process.

85 Some controls were subsequently introduced at the St George Financial Planning business (**STGFP**). STGFP is and was at all material times part of BTFA.

86 As part of the business changes resulting from the FoFA reforms, an exception report was introduced for STGFP.

87 This exception report was introduced in or around July 2013, and ran until, at least, November 2018. This report was run twice monthly for the majority of its operation.

88 This exception report (the **STGFP exception report**) was a spreadsheet described upon its initial distribution as having been designed to support FDS production. The STGFP exception report identified discrepancies in the AdviserNetGain (**ANG**) data, which, if left unaddressed, would lead to an FDS being produced with a warning or incorrect information. ANG was a purpose-built software application that was used by advisers, paraplanners and support staff to, inter alia,

support advice documentation generation and record customer data. This system was used by STGFP and the BTGL business.

- 89 The STGFP exception report was initially generated and distributed by the FoFA Program team. From mid-2014, the report was generated by the Adviser Payment Services (APS) team.
- 90 In the majority of instances, the STGFP exception report identified five kinds of exceptions. One of these exceptions identified customers who were recorded in ANG as having an “inactive” service package, but who had nonetheless been charged an ongoing advice fee in the preceding month. These customers were also listed with their relevant “status” as recorded in ANG. This status could include “active”, “closed”, “inactive” or “deceased”. This list of customers was typically included under the heading “Inactive package but OA fees paid”. The STGFP exception report enabled identification of instances in which a customer had been charged an ongoing advice fee in the preceding month and was recorded in ANG as both having an inactive service package and being deceased.
- 91 Where customers were identified in the ‘Inactive package but OA fees paid’ list, one of two actions was required to rectify the exception. Either: (a) if the customer was still a party to an ongoing advice service arrangement, the package status was to be amended to ‘active’; or (b) if the customer was no longer a party to an ongoing advice service arrangement, the ongoing advice fees were to be switched off.
- 92 In response to the STGFP exception reports, STGFP was able to give instructions as to steps to be taken in respect of a deceased estate. For example, on 20 August 2013, a Change Manager, FoFA Program, Financial Planning Stream, BTFG, sent an email to a number of BTFA financial advisers, including senior managers which included (among others) the Head of Business Operations, St George Financial Planning, Advice, BTFG, the Regional Manager, Advice, Practice Manager, Advice, BTFG, the Head of Service Excellence Centres, BTFG and the Project Manager FoFA Advice (BT Risk – Strategic Reform, Westpac Group): WES.0010.0398.8174. The email included:

Please find below a list of clients requiring your action. According to our reports, these clients have paid an ongoing advice fee recently and therefore we believe that an FDS is required because it is highly likely we will have collected 12 months or more of fees since 1 July 2012 (regardless of ANG client status “Active, Inactive, Prospective, Closed, Deceased”).

Actions required:

3. Where the client status is Inactive or Closed and an OA fee is still being received and client is on an ongoing advice arrangement, change Client Status in ANG to Active, set the service arrangement status in ANG to Active and confirm service package is correct in ANG (Biannual, Annual, Portfolio Review, Proactive Portfolio Review or Foundation).

4. Where the client status is Inactive or Closed and no OA arrangement is in place or an OA fee is not being received, ensure the service arrangement status is Inactive in ANG, and ensure all ongoing fees are cancelled via the Platform/product

5. Where the client status is Deceased and you have agreed with the Estate/spouse to continue to provide ongoing advice, rename the client record to Estate of the Late Mr Client, set the service arrangement status in ANG to Active and confirm service package is correct in ANG (Biannual, Annual, Portfolio Review, Proactive Portfolio Review or Foundation)

6. Where the client status is Deceased and you have not agreed to continue the ongoing arrangement, contact the Estate to do this, or terminate the ongoing arrangement with the client and cancel all ongoing fees via the Platform/product.

93 No such controls were otherwise introduced by the Advice Licensees.

94 In December 2013, another business process document was issued as part of the implementation of the FoFA reforms: WES.0012.0021.3342. This BRD, titled 'Business Requirements Document - Ongoing Advice Obligations – Incorporating bulk delivery of Fee Disclosure Statements & associated controls' (**2013 FoFA OAS BRD**) (draft), proposed processes to further enhance the control environment for FDS production. The 2013 FoFA OAS BRD proposed a range of business process changes, including a series of functional requirements to support centralised FDS production. Of these, a number dealt with deceased estates in the context of ongoing advice service arrangements:

- (a) FR 1.11: this was an exception report to be run prior to bulk FDS production, that would identify any data fields that would result in an FDS being delivered incorrectly or not at all. One of the exceptions intended to be identified was where the client was deceased;
- (b) FR 1.18: this was a data clean-up process to support bulk FDS production, which included

removing deceased clients;

- (c) FR 1.22: this stated '[a] warning will be provided when the FDS to be produced is for a deceased client'; and
- (d) FR 2.09: this was a flag which was to identify instances where a deceased client was being moved from the Customer Information System (CIS) to the Leading Edge Adviser Platform (LEAP).

95 The Advice Licensees did not implement any of these functional changes.

96 On 23 occasions during the period from 2013 to January 2018 the issue of fees being charged to deceased customers was raised by advisers or support staff as part of the 'business as usual' (BAU) administration relating to advice clients. Whilst the substance of these queries varied, they typically related to whether and how advice fees should cease to be charged to deceased customers. The Adviser Payments Services team generally responded to the effect that any ongoing fees charged to the deceased person must cease: see eg WES.0010.0134.3138, WES.0010.0134.3146, WES.0010.0134.3470, WES.0010.0439.4053, WES.0010.0245.4747.

97 Despite the Adviser Payments Services team having a clear position that advice fees must not be charged to deceased customer accounts, the Advice Licensees continued to accept such fees and failed to address the issue systemically, or to have a system for the provision of refunds to Affected Members.

Further Management Consideration in 2013

98 In 2013, the Advice Licensees also considered the issue of charging advice fees to deceased customer accounts in a further context.

99 In June 2013, the Advice Licensee's management and staff, including some within the BTFA Advice Design and Delivery team, considered the rules and processes relating to ongoing advice in the context of deceased estates, including, inter alia, the continuation of advice fees, the need for advice to be provided to trustees and beneficiaries, and the obligation to issue an FDS. An email sent on 1 June 2013 by the Advice Specialist, Advice Design and Delivery, Practice Management, BTFG to the Senior Manager, Advice Design and Delivery, Practice Management, BTFG outlined various assumptions in relation to ongoing advice relationships and the need to enter into a new ongoing advice relationship, where a customer was deceased, with the estate or anyone connected to the deceased who wished to receive advice services. Some of the points in

this email included (WES.0010.0524.5360):

1. Deceased customer - existing ongoing advice (QA) relationship

- Legal position - I suspect that the SoA is silent on the issue of whether the OA relationship ceases on the customer's death.*
- On the customer's death, the objectives and interests of the deceased customer may not align with the interests of the estate or its beneficiaries (e.g. infant beneficiaries).*
- So it may be appropriate for the existing OA relationship to cease and fee payments terminated once the business becomes aware of the customer's death...*

2. Estate of the deceased customer - new OA relationship

- The period of the administration of the estate of the deceased customer (the estate) will depend on a range of factors (e.g. the type and location of the assets; the terms of the Will).*
- This phase will generally involve the Estates Management Team - the cessation of the deceased's OA relationship could be initiated by the planner either upon direct notification from the family or upon notification from the Estates Management Team as part of the estate administration process.*
- The cessation of the deceased's OA relationship provides the opportunity for the planner to contact the executors/trustees to ascertain their needs and establish an OA relationship...*

100 Over June and July 2013, this email was forwarded amongst a Lawyer, Advice and Private Wealth, BTFG, a Business Architect and Project Manager, FoFA Program, a Project Manager, FoFA Advice (BT Risk – Strategic Reform), Westpac Group, a Process Analyst, FoFA Program, Strategic Reform, BT Risk, a Business Analyst, FoFA Program, Strategic Reform, BT Risk, BTFG, a Project Manager, Wealth Products Stream, FoFA Program, a Business Analyst, FoFA, The Westpac Group, a Policy Manager, FoFA Program, Strategic Reform, BT Risk, and a Regulatory Consultant, Advice Services, BTFG: WES.0010.0524.5360, WES.0010.0524.5365.

101 The forwarding emails included legal advice, including on 5 July 2013 from the Lawyer, Advice and Private Wealth, BTFG.

- 102 The respondents claim privilege over the legal advice.
- 103 On 9 July 2013, the Project Manager, The Westpac Group, instructed the Senior Manager, Advice Design, Practice Management, BTFG, to *'please resolve if the ongoing advice policy needs to be changed to reflect legal view on deceased estates'*: WES.0010.0524.5360 at .5362. This was copied to the Business Analyst, FoFA, The Westpac Group, and the Policy Manager, FoFA Program, Strategic Reform, BT Risk.
- 104 The Business Analyst, FoFA, The Westpac Group, responded on the same day (WES.0010.0524.5360 at .5361) noting:

This question was recently sent to the FoFA inbox and after asking a number of people, including Operation Managers, I was advised that the ongoing arrangement and the fees must cease. However, no one was able to direct me to any documented process. Happy to include something in the OA Policy if appropriate....

- 105 The email communications occurring throughout June and July of 2013, included references to updating the ongoing advice policy to provide that where an ongoing advice customer died, the adviser would be directed to cease the existing ongoing advice arrangement and terminate any ongoing advice fees. It was also recommended that a template covering correspondence be developed when providing an FDS to a deceased customer's estate: WES.0010.0524.5360, WES.0010.0524.5365, WES.0010.0194.8636, WES.0010.0524.8153, WES.0010.0524.8154, WES.0010.0524.8155.
- 106 Further, in March 2014, BTFA issued an internal 'Bank Financial Planning Risk Report' for the period 1 February to 28 February 2014: WBC.500.015.0021. The report included an observation relating to FoFA, to the effect that work was underway to develop an exception report capability as to ongoing advice services, *'in order to provide the right level of oversight and visibility on services not being delivered and why'*.
- 107 Notwithstanding, no amendments were made to the ongoing advice policy as a result of these communications and advice fees continued to be deducted from deceased customer accounts.

The 2015 Template Letter

- 108 The SIPO Entities considered the issue again in 2015.
- 109 On 20 May 2015, a Case Manager, Estate & Claims Management, Platforms and Operations,

BTFG, emailed the technical production queries inbox, stating that the ECM team were in the process of writing new template letters for deceased customers and attached a draft template letter dealing with pension products where an automatic reversionary nomination was in place: WES.0010.0148.5441.

- 110 On 21 May 2015, a Technical Manager, Product Technical, Business Risk and Regulatory COE, Superannuation, BTFG, replied: WES.0010.0148.5441. As part of her response, she queried the continuation of ongoing advice fees for deceased estates, stating:

Mind you I also thought that generally when we place a deceased code on the account that all fees halt until the estate has been finalised as the contract of the ongoing ASF is with the member and adviser. When the member passes away, that contract is now null and void (General or common law I think....can't remember off the top of my head).

- 111 On 27 May 2015, the Technical Manager, Product Technical, Business Risk and Regulatory COE, Superannuation, BTFG, sought legal advice from the Head of Legal, BT Super & Investments Compliance, Legal & Secretariat, as to proposed changes to template letters issued to deceased clients: WES.0010.0148.5983, WES.0010.0148.5985.
- 112 The respondents claim privilege over that request for legal advice.
- 113 On 12 June 2015, an Associate from an external law firm sent an email to the Technical Manager, Product Technical, Superannuation, BTFG, copying in a Senior Manager, Product Technical, Superannuation, BTFG, and the Head of Legal, BT Super & Investments Compliance, Legal & Secretariat: WES.0010.0148.6685. The email included legal advice as to proposed changes to template letters issued to deceased clients.
- 114 The respondents claim privilege over that legal advice.

Further Consideration in 2017-2018

- 115 The Advice Licensees again considered the issue of charging fees to deceased customer accounts in 2017.
- 116 On 24 May 2017, the BTFA Compliance Risk Council (**BTFA CRC**) raised the question of whether there was a policy as to what to do, in respect of an ongoing advice service, upon the death of the customer: WBC.600.066.0564. The BTFA CRC made this a 'Policy Action Item'.
- 117 A Senior Compliance Manager, BTFG, was responsible for actioning the Policy Action Item.

During the period from around 21 June 2017 to 21 July 2017, the Senior Compliance Manager, BTFG, referred the Policy Action Item to a Policy Manager, BT Advice Compliance Policy, BTFG, whose role included providing support on developing and updating BTFA policies.

118 The referral led to no formal finding or report. Notwithstanding, the Policy Action Item was closed during the period from 23 August 2017 to 20 September 2017.

119 The Advice Licensees again considered the issue in late 2017.

120 At 4.15pm on 5 December 2017, a Business Process Manager, Advice Service Delivery, BT Customer Operations, COO, BTFG / Business Application Manager, Advice Remediation Hub, Strategy and Enterprise Services, Westpac Group, sent an email to a Policy Manager, BT Advice Compliance Policy, BTFG, and a National Manager, Ongoing Advice Offer, BT Advice Services, copying in a Team Leader, Advice Services Delivery, BT Customer Operations, COO, BTFG, and an Operations Manager, BT: WES.0009.0058.0399 at .0401. The email included:

I'm looking to see if you can point me in the right direction- the area of deceased estates and particularly around ongoing advice seems to be quite murky and has been flagged to me a number of times by our team/adviser wanting to know how they should be handled. Given the sensitivity it feels like it is something we should address and get clear on?

I can't locate anything in policy that really suggests a process or expected management and we are really struggling with knowing how we should handle these in an ongoing advice/RN/best interest perspective. I understand that essentially a new SoA should be completed at some point however given a lot of clients are not in a position to sit down with an adviser straight after a family member passing but they may still wish to continue with their ongoing agreement we need to explore perhaps building this out from both a policy and a business process perspective.

121 At 4.51pm on the same day, the Policy Manager, BT Advice Compliance Policy, BTFG, sent a reply email to the Business Process Manager, Advice Service Delivery, BT Customer Operations, COO, BTFG / Business Application Manager, Advice Remediation Hub, Strategy and Enterprise Services, Westpac Group, and the National Manager, Ongoing Advice Offer, BT Advice Services, copying in the Team Leader Advice Services Delivery, BT Customer Operations, COO, BTFG, and the Operations Manager, BT: WES.0009.0058.0399 at .0401. The email included:

We understand the agreement with the customer ceases on their death. The beneficiaries are not those who made the OASA agreement with us so the OASA should be cancelled. Happy for Legal to provide an opinion to clarify the situation. An SoA is usually only going to be required if the beneficiaries are our customers, e.g. partner. We can speak to the executor in relation to uncovering the deceased assets, but that is pretty much it. I don't know how Super Wrap manages it, but presumably they don't mandate the beneficiary has to deal through the deceased's adviser.

- 122 At 4.58pm on the same day, the Business Process Manager, Advice Service Delivery, BT Customer Operations, COO, BTFG / Business Application Manager, Advice Remediation Hub, Strategy and Enterprise Services, Westpac Group, responded to the same group: WES.0009.0058.0399 at .0401. The email included:

I understand if the sole client on an OASA passes the agreement is ceased however I mean more specifically if we have for example a couple on the agreement and the spouse passes but the surviving spouse wants to stay on the arrangement. We are told that all parties who signed the last opt in (ATP/ RN) must sign the renewal notice and technically parties to the arrangement are not the same as the existing agreement in this example ... there's currently no real clarity if an RN is suitable for the sole client to now sign or OAS should be cancelled and fee switched off until the surviving spouse can speak with adviser, discuss new advice and choose if they wish to be on a sole agreement from that point via new SoA ... hopefully that makes sense!

- 123 At 9.44am on 10 January 2018, a Regulatory Consultant, Advice Services, BTFG, sent an email to a Senior Documentation Analyst, Advice Offers and Applied Research, BT Advice and Private Wealth, and a Policy Manager, BT Advice Compliance Policy, BTFG: WES.0010.0001.0140. The email forwarded legal advice received in July 2013, as to the requirements for transacting upon deceased estates.

- 124 The respondents claim privilege over the legal advice.

- 125 In that context, on 12 January 2018, legal advice was provided by a Lawyer, BT Legal, Advice & Private Wealth, Wealth, Australian Banking and Technology: WES.0010.0194.8936.

- 126 The respondents claim privilege over the legal advice.

- 127 In response, on 15 January 2018, the Business Process Manager, Advice Service Delivery, BT

Customer Operations, COO, BTFG / Business Application Manager, Advice Remediation Hub, Strategy and Enterprise Services, Westpac Group sent a further email to the Senior Documentation Analyst, Advice Offers and Applied Research, BT Advice and Private Wealth, the Policy Manager, BT Advice Compliance Policy, BTFG and an Advice Applications Manager, BTFG, copying in an Operations Manager, BT: WES.0010.0534.8812 (.8813). The email commented upon the legal advice:

This is amazing, it's the most direction we have received re expectation of deceased estates management scenarios.

I think we would need an update in policy with the below to then be able to build and introduce/support process changes. As for what we need- it would definitely be an additional guide on BTAS regarding deceased estates management as per below.

I think we may also need to look at an additional 'cancellation letter' template that can be used by AI for cancellations where it is a deceased estate scenario to make it appropriate to the situation/who we are addressing to and would also provide an opportunity to provide the advisers contact details to executor/next of kin in the event they would like to seek advice. The current cancellation letter isn't appropriately worded for this scenario and since we have never had a process where we clearly should be cancelling packages under these circumstances I think the current template would be inappropriate.

Excited to get cracking on this as it's been a long time coming- would we prefer to catch up and discuss next steps and have a bit of an action plan?

Outside ourselves, I am sure we need stakeholders for the groups impacted (ie. [National Operations Manager, BT Financial Advice] for advice, a rep from AI, rep from legal? And perhaps [National Manager, Ongoing Advice Offer, BT Advice Services] since this is a big part of OAS).

- 128 On 31 January 2018, the National Manager, Ongoing Advice Offer, BT Advice Services sent an email to an Executive Manager, Risk and Compliance, the Senior Documentation Analyst, Advice Offers and Applied Research, BT Advice and Private Wealth, the Lawyer, BT Legal, Advice & Private Wealth, Wealth, Australian Banking and Technology, and a Lawyer, BT Legal, Advice & Private Wealth, Compliance, Legal & Secretariat, copying in the Policy Manager, BT Advice Compliance Policy, BTFG and the National Operations Manager, BT Financial Advice: WES.0010.0194.8936. The email included:

Thanks for your advice in relation to deceased estates. This is an important topic and a clear gap in our policies and processes.

Further to [Executive Manager, Risk and Compliance] comments, I believe that we need to consider the range of scenarios and the appropriate approach for each scenario to ensure that our advisers are able to act with compassion and in customers best interests during a difficult period. It is important to note that many elderly couples have a long term relationship with their adviser and Westpac, are expecting this relationship and support to continue in the event that one partner becomes ill or dies. Whilst the OA arrangement needs to be cancelled in the event of death, we do need to provide sensible guidance to our advisers on how to manage the various situations they will encounter. We also need consider what might be appropriate given that some of these customers maybe regarded as vulnerable customers.

I have recently had feedback from advisers that our current processes and template letters are not suitable for managing customers in the event of death or serious illness. Given this, it makes sense to me that we would establish processes, policies and customer templates to specifically cater to the range of customer scenarios.

Suggested Scenarios to consider

- 1. One partner dies*
- 2. One partner becomes ill and unable to renew OA*
- 3. OA customer becomes ill and unable to renew OA*
- 4. OA customer dies*

I am happy to set up some time to discuss.

129 This led, in February 2018, to the creation of a BTFA informal working group directed to approaches to the management of deceased estates, including the cancellation of ongoing advice fees upon notification of death. Attendees of meetings included an Operations Officer, BT Advice, the National Manager, Ongoing Advice Offer, BT Advice Services, the Lawyer, BT Legal, Advice & Private Wealth, Wealth, Australian Banking and Technology, the Advice Applications Manager, BTFG, the Business Process Manager, Advice Service Delivery, BT Customer Operations, COO, BTFG / Business Application Manager, Advice Remediation Hub,

Strategy and Enterprise Services, Westpac Group, the Senior Documentation Analyst, Advice Offers and Applied Research, BT Advice and Private Wealth, the Executive Manager, Risk and Compliance, and the Policy Manager, BT Advice Compliance Policy, BTFG.

- 130 In May 2018, the working group was expanded to include BTGL representatives as optional attendees. These optional attendees included the National Manager, Advice Capability, BT Advice & Private Wealth, the National Manager, Advice Capability, BT Group Licensees, a Risk Manager, Analytics, Digital & Marketing and Bank Wealth Distribution Risk, BTFG, and a BTGL Policy Manager.

C8 Policies

- 131 As further detailed below, during the Relevant Period until in or around September 2018, the respondents had neither a specific system of monitoring nor a set of policies directed towards ensuring:

- (a) that advice fees were not deducted from accounts following notification of the death of the accountholder;
- (b) the timely notification of a client's death by advisers to appropriate persons within the respondents; and
- (c) the return to affected accounts of advice fees deducted from an account following the death of the accountholder.

- 132 Despite the knowledge and circumstances referred to in Part C7 above, it was not until after the hearings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, that the respondents introduced specific policies to address the issue of the steps to be taken upon notification of the death of an accountholder.

- 133 Until the Royal Commission, the SIPO Entities continued to deduct advice fees from deceased customer accounts and the Advice Licensees continued to accept and retain those fees with the knowledge in Part C7.

The Policies of the Advice Licensees

- 134 Prior to November 2018, the Advice Licensees had no specific policies in place regarding the receipt of a notification of death. The process for ceasing to charge advice fees was the same whether a request was made because of the death of a client or otherwise.

- 135 Prior to December 2016, requests to cease charging advice fees were actioned on an ad hoc basis. Advisers were required under the terms of the ongoing advice service policies, as in force and amended from time to time throughout the Relevant Period, to action customer requests to cancel ongoing advice service arrangements.
- 136 From July 2014 to December 2016, this required the adviser to:
- (a) hold correspondence from the customer requesting the cancellation;
 - (b) (where the customer held certain products) to outline the risks of retaining an investment without receiving ongoing advice;
 - (c) to obtain the customer's cancellation instruction and ensure that any ongoing advice fee was cancelled;
 - (d) to check whether the customer was due to receive any FDS; and
 - (e) to provide the relevant cancellation letter to the customer.
- 137 In December 2016, a 'Process for Switching Off Fee on Customer Request' protocol was implemented. From December 2016 to July 2018 the Advice Implementation Team was generally responsible for switching off advice fees as requested by advisers via an internal system known as Business Performance Management (**BPM**). Advisers could request that fees be switched off for a variety of reasons, including the death of a customer. However, the process was not directed to recording the reason for the fees being switched off and so the event of a client's death was not recorded in BPM.
- 138 From July 2018, the ongoing advice service team responsible for actioning fee turn off requests would action any request provided by advisers via BPM. A range of instances could cause an adviser to lodge a request via BPM, including the death of a customer. However, the reason for an adviser lodging a request, such as the death of a client, would not necessarily be recorded.
- 139 Prior to specific policies being introduced in 2018, any further steps taken by an adviser (and/or the BTGL business) following notification of death were *ad hoc*.
- 140 The Advice Licensees did not, until 2018, have a policy for refunding advice fees taken from a deceased customer account.

The Policies of the SIPO Entities

- 141 During the Relevant Period, the processes and procedures to be followed by the SIPO Entities after receipt of a notification of death were to be effected by the Estates and Claims Management (ECM) team, a specialist estates team sitting within the SIPO Entities.
- 142 Prior to August 2018, the SIPO Entities only ceased deducting advice fees from customer accounts in circumstances where an instruction was received from the adviser or from the legal representative of the estate (such as the executor). This was despite having been notified that the customer had died. There was no specific process to cease the deduction of advice fees from clients' accounts upon notification of death.
- 143 The relevant processes were revised in around August 2018 following identification of the deceased estate issue as described.
- 144 After August 2018, the same processes remained in place. However, an additional process was also added to deal with the switching off and refunding of adviser fees. Following an 'informal' notification of a client's death (e.g. via phone call), the ECM team would arrange for all adviser fees to be switched off. Upon 'formal' notification of death (e.g. written notification from the adviser, solicitor or legal personal representative), any adviser fees deducted after death were to be refunded to the deceased investor/ client account back to the date of death.
- 145 Upon receipt of a notification of death, the ECM case manager was to manage the account liaising with the adviser, solicitor or legal personal representative, advising the adviser, solicitor or legal personal representative what was required to release the investment held in the name of the deceased investor/client.

The Introduction of Further Formal Policies

- 146 In November 2018, the BTFA and BTGL business units introduced formal deceased estates policies requiring, upon notification of death, the relevant adviser to contact the financial product provider (including the SIPO Entities, where applicable) to ensure that the advice fees ceased to be deducted from the deceased customer's account.
- 147 The new policies were not entirely effective in preventing advice fees from being charged to deceased customer accounts. Fees continued to be charged to some deceased customer accounts.
- 148 On 1 July 2019, Westpac ceased providing personal financial advice through employed advisers.

149 On 1 October 2019, Securitator and Magnitude ceased providing personal financial advice.

C9 Notification to ASIC, and the Subsequent Investigation

150 In November 2018, the Advice Licensees and the SIPO Entities provided notifications to ASIC pursuant to s 912D of the Corporations Act of the conduct the subject of this Proceeding.

151 Since November 2018, the respondents have responded to a number of notices issued by ASIC. As further detailed below, certain responses given by the respondents were incomplete or inaccurate.

912C Responses of February and November 2020

152 By their Section 912C Responses dated 19 February 2020, the Advice Licensees stated that it was only in April 2018, at the time of the Royal Commission Advice Sessions that they became aware of the issues (that deceased clients were being charged ongoing advice fees and that this was not permitted). This was upon BT Advice instigating a review of all deceased estate accounts across BTGL (including Securitator and Magnitude). The responses indicated that between April and July 2018, the awareness of this issue was evolving as different people became aware of the issue with the progress of the review.

153 By their Section 912C Response of 9 November 2020, the Advice Licensees stated that they did not become aware of gaps in their policies until 2018. The response continued to the effect that until that point the combination of the ‘customary’ practice of BTFA advisers (said to be to either switch off the fees or continue providing services to the estate or beneficiary) and that the death of a client was an uncommon event amongst the set of clients a BTFA adviser advised, meant that the issue was not drawn to Westpac’s attention until 2018. It was said that it was as a result of the heightened awareness from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry that gaps in BTGL’s formal policies were identified and steps taken to address the matter.

154 The SIPO Entities also provided a Section 912C Response on 19 February 2020. By that response, the SIPO Entities stated that they had undertaken a series of informal investigations between April and August 2018 to determine whether there were any deceased estate accounts where advice fees were being deducted from the accounts after the member’s death. These investigations commenced following the Royal Commission Advice Sessions. In August 2018, the SIPO Entities identified that this issue required a more formal and thorough investigation.

912C Responses of August 2021

- 155 By their Combined Section 912C Response of 6 August 2021, the respondents identified that (contrary to the matters referred to in the 912C Responses of February and November 2020), the BTFA CRC meeting of May 2017 had given rise to consideration amongst BTFA personnel as to whether there was a policy addressing actions to be taken upon the death of a customer with an ongoing advice service arrangement. However, the action item was closed in or around August to September 2017, without reaching a conclusion. The BTFA CRC was a dedicated forum to discuss operation risks, compliance activities and updates from supporting teams. The primary role of the BTFA CRC was to review and monitor the operation of the BTFA business, oversee and manage risks associated with the BTFA business.

Westpac Investigation Report of September 2021

- 156 On 3 September 2021, the respondents informed ASIC of the findings of an internal investigation it had conducted. The investigation identified that certain responses to Section 912C Notices issued by ASIC on 19 December 2019, 24 January 2020, 10 August 2020, 23 February 2021 and 4 June 2021 were incorrect or incomplete. The respondents provided a report as to their investigation, to be treated as a response to the s 912C Notices.
- 157 Later in September 2021, the respondents produced (for the first time) the documents referred to in the investigation report.
- 158 The investigation report, and the documents produced, revealed (again, for the first time), that the respondents had known of the relevant issues since early 2013: see Part C7 above.

C10 Remediation

- 159 The respondents have to date remediated the estates of 11,848 SIPO Entity Affected Members and Non-Group Affected Members in the amount of \$19,449,584 (comprising \$13,716,416 in fees and \$5,733,168 in interest).
- 160 The respondents' remediation review commenced in November 2018. It has involved the review of all deceased estates who were charged fees since 1 January 2011. The remediation program is continuing, though it has been largely completed.

C11 Harm Suffered and Profits Earned from the Conduct

- 161 As a result of the matters set out above, during the Penalty Period up to 9 October 2019, 1,417

Affected Members were (as to their estates) harmed by:

- (a) Westpac on 4,324 occasions, in circumstances where it charged advice fees of \$812,734.74 after being notified of the customer's death and (prior to remediation), had the benefit, and the time value, of those fees;
- (b) Securitor on 3,276 occasions, in circumstances where it charged advice fees of \$388,180.07 after being notified of the customer's death and (prior to remediation), Securitor's Authorised Representatives generally had the benefit, and the time value, of those fees; and
- (c) Magnitude on 1,245 occasions, in circumstances where it charged advice fees of \$226,774.07 after being notified of the customer's death and (prior to remediation), Magnitude's Authorised Representatives generally had the benefit, and the time value, of those fees.

See **Annexure A**.

162 During the Penalty Period up to 10 September 2018, Affected Members and Non-Group Affected Members were also occasioned harm (as to their estates) by the conduct of the SIPO Entities (excluding BTFM No. 2) in deducting fees for advice after being notified of the customer's death and remitting the fees to the relevant Advice Licensee or Non-Group Advice Licensee:

- (a) AAML on 5 occasions;
- (b) ACML on 3,102 occasions;
- (c) BTFM on 19,783 occasions; and
- (d) BTPS on 3,748 occasions.

See **Annexure B**.

163 The estates of the Affected Members and Non-Group Affected Members suffered financial loss (up until the date of remediation) and inconvenience as a result of the conduct because they did not have the benefit of the funds that were deducted from the customer's account.

D. ADMISSIONS BY THE RESPONDENTS

D1 Contraventions of the ASIC Act

Section 12DI(3) of the ASIC Act

- 164 The financial product advice for which Affected Member accounts were charged was a financial service, or financial services, within the meaning of s 12BAB(1) of the ASIC Act.
- 165 By charging the advice fees, the Advice Licensees in trade or commerce accepted payment or other consideration for financial services within the meaning of s 12DI(3)(a) of the ASIC Act.
- 166 At the time of acceptance of the advice fees in the circumstances set out in paragraphs [31] to [51] above, there were reasonable grounds for believing that the Advice Licensees would not be able to supply the financial services within a reasonable time or at all.
- 167 Accordingly, by accepting each advice fee from the Affected Member's account (as deducted by a SIPO Entity or a Non-Group SIPO), the Advice Licensees contravened s 12DI(3) of the ASIC Act.
- 168 As set out in **Annexure A**:
- (a) in the Penalty Period up to 1 July 2019, Westpac contravened s 12DI(3) of the ASIC Act, on each of the 4,324 occasions that Westpac accepted payment of an advice fee after being notified of the customer's death, in circumstances where, at the time of acceptance there were reasonable grounds for believing that Westpac would not be able to supply the financial services within a reasonable time or at all. These fees amounted to \$812,734.74, affecting the estates of 575 customers;
 - (b) in the Penalty Period up to 1 June 2019, Securitor contravened s 12DI(3) of the ASIC Act, on each of the 3,276 occasions that Securitor accepted payment of an advice fee after being notified of the customer's death, in circumstances where, at the time of acceptance there were reasonable grounds for believing that Securitor would not be able to supply the financial services within a reasonable time or at all. These fees amounted to \$388,180.07, affecting the estates of 605 customers; and
 - (c) in the Penalty Period up to 9 October 2019, Magnitude contravened s 12DI(3) of the ASIC Act, on each of the 1,245 occasions that Magnitude accepted payment of an advice fee after being notified of the customer's death, in circumstances where, at the time of

acceptance there were reasonable grounds for believing that Magnitude would not be able to supply the financial services within a reasonable time or at all. These fees amounted to \$226,774.07 affecting the estates of 237 customers.

169 Further, as to the advice fees remitted by the SIPO Entities (excluding BTFM No.2) up to and including 10 September 2018, the SIPO Entities (excluding BTFM No.2) knew that:

- (a) the Advice Licensees accepted the advice fees as payment for financial services (within the meaning of s 12BAB(1) of the ASIC Act);
- (b) after receiving notification of death, there were reasonable grounds for believing that the Advice Licensees would not be able to supply the financial services within a reasonable time or at all.

170 Accordingly, by remitting each such advice fee to an Advice Licensee, the SIPO Entities (excluding BTFM No.2) were, as to fees remitted up to and including 10 September 2018, directly or indirectly knowingly concerned (within the meaning of s 12GBA(1)(e) of the ASIC Act as then in force) in the Advice Licensees' contraventions of s 12DI(3).

171 As set out in **Annexure B**:

- (a) in the Penalty Period up to 10 September 2018, AAML was directly or indirectly knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, on each of the 5 occasions that AAML remitted payment of an advice fee to Westpac, Securitor or Magnitude after being notified of the customer's death and knowing, at the time of the remittance, that there were reasonable grounds for believing that the Advice Licensee would not be able to supply the financial services within a reasonable time or at all. These fees amounted to \$487.23, affecting the estates of 2 customers;
- (b) in the Penalty Period up to 10 September 2018, ACML was directly or indirectly knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, on each of the 781 occasions that ACML remitted payment of an advice fee to Westpac, Securitor or Magnitude after being notified of the customer's death and knowing, at the time of the remittance, that there were reasonable grounds for believing that the Advice Licensee would not be able to supply the financial services within a reasonable time or at all. These fees amounted to \$129,838.02, affecting the estates of 106 customers;

- (c) in the Penalty Period up to 10 September 2018, BTFM was directly or indirectly knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, on each of the 3,948 occasions that BTFM remitted payment of an advice fee to Westpac, Securitor or Magnitude after being notified of the customer's death and knowing, at the time of the remittance, that there were reasonable grounds for believing that the Advice Licensee would not be able to supply the financial services within a reasonable time or at all. These fees amounted to \$526,716.42, affecting the estates of 935 customers;
- (d) in the Penalty Period up to 10 September 2018, BTPS was directly or indirectly knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, on each of the 717 occasions that BTPS remitted payment of an advice fee to Westpac, Securitor or Magnitude after being notified of the customer's death and knowing, at the time of the remittance, that there were reasonable grounds for believing that the Advice Licensee would not be able to supply the financial services within a reasonable time or at all. These fees amounted to \$212,307.65, affecting the estates of 166 customers.

Section 12CB of the ASIC Act

172 Further, in all the circumstances, including the knowledge referred to in Part C7 above:

- (a) Westpac engaged in unconscionable conduct, in trade or commerce, in connection with the supply of financial services, in contravention of s 12CB(1) of the ASIC Act by charging advice fees during the Penalty Period up to 12 November 2018, to Affected Member accounts after being notified of the customer's death, for financial advice that could not and was not provided to the customer, and by retaining those fees;
- (b) Magnitude engaged in unconscionable conduct, in trade or commerce, in connection with the supply of financial services, in contravention of s 12CB(1) of the ASIC Act by charging advice fees during the Penalty Period up to 19 November 2018, to Affected Member accounts after being notified of the customer's death, for financial advice that could not and was not provided to the customer, and by retaining those fees; and
- (c) Securitor engaged in unconscionable conduct, in trade or commerce, in connection with the supply of financial services, in contravention of s 12CB(1) of the ASIC Act by charging advice fees during the Penalty Period up to 19 November 2018, to

Affected Member accounts after being notified of the customer's death, for financial advice that could not and was not provided to the customer, and by retaining those fees.

D2 Contraventions of the Corporations Act

Section 962P of the Corporations Act

- 173 Advice fees in respect of customers to whom Westpac first provided advice services after 1 July 2013 (**Post-FOFA customers**) were subject to Subdivision B of Division 3 of Part 7.7A of the Corporations Act.
- 174 Post-FoFA customers receiving financial advice services from Westpac, and whose accounts were charged advice fees after their death, are referred to as **s962P Affected Members**.
- 175 The advice services for which s962P Affected Member accounts were charged were a financial service, or financial services, within the meaning of s 766A of the Corporations Act (by reason of the advice services being or including personal advice within the meaning of s 766B(3)).
- 176 In respect of each s962P Affected Member, there was (until death) an ongoing fee arrangement within the meaning of s 962A of the Corporations Act between the s962P Affected Member and the applicable Advice Licensee(s) or their Authorised Representative.
- 177 The advice fees were ongoing fees within the meaning of s 962B of the Corporations Act.
- 178 In respect of each ongoing fee arrangement for which Westpac was the relevant Advice Licensee, Westpac was the fee recipient within the meaning of s 962C of the Corporations Act.
- 179 Upon the death of a Post-FOFA customer, their ongoing fee arrangement terminated within the meaning of s 962P of the Corporations Act.
- 180 By continuing to charge a Post-FOFA customer advice fees after their death, Westpac contravened s 962P of the Corporations Act.
- 181 As set out in **Annexure C**, during the Penalty Period up to 1 July 2019, Westpac charged advice fees to Post-FOFA customers after being notified of their death on 1,212 occasions in contravention of s 962P of the Corporations Act. These fees amounted to \$301,928.35, affecting the estates of 179 customers.

Section 912A(1)(c) of the Corporations Act

182 Further:

- (a) on each occasion that Westpac contravened ss 12DI(3) or 12CB of the ASIC Act or s 962P of the Corporations Act, Westpac breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act;
- (b) on each occasion that Securitor contravened ss 12DI(3) or 12CB of the ASIC Act, Securitor breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act;
- (c) on each occasion that Magnitude contravened ss 12DI(3) or 12CB of the ASIC Act, Magnitude breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act;
- (d) on each occasion that AAML contravened or was involved in a contravention of s 12DI(3) of the ASIC Act, AAML breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act;
- (e) on each occasion that ACML contravened or was involved in a contravention of s 12DI(3) of the ASIC Act, ACML breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act;
- (f) on each occasion that BTFM contravened or was involved in a contravention of s 12DI(3) of the ASIC Act, BTFM breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act; and
- (g) on each occasion that BTPS contravened or was involved in a contravention of s 12DI(3) of the ASIC Act, BTPS breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

Section 912A(1)(a) of the Corporations Act

183 Further, by its conduct during the Penalty Period up to 12 November 2018, in:

- (a) failing to have systems, practices and/or policies capable of preventing the charging of advice fees to Affected Member accounts after notification of a customer's death;

and

- (b) failing to have systems, practices and/or policies providing for the refund of advice fees back to the date of a customer's death,

Westpac breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

184 By its conduct during the Penalty Period up to 19 November 2018, in:

- (a) failing to have systems, practices and/or policies capable of preventing the charging of advice fees to Affected Member accounts after notification of a customer's death; and
- (b) failing to have systems, practices and/or policies providing for the refund of advice fees back to the date of a customer's death,

Securitor breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

185 By its conduct during the Penalty Period up to 19 November 2018, in:

- (a) failing to have systems, practices and/or policies capable of preventing the charging of advice fees to Affected Member accounts after notification of a customer's death; and
- (b) failing to have systems, practices and/or policies providing for the refund of advice fees back to the date of a customer's death,

Magnitude breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

186 By its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees from Affected Member accounts after notification of a customer's death, AAML breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were

provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

- 187 By its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees from Affected Member and Non-Group Affected Member accounts after notification of a customer's death, ACML breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.
- 188 By its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees from Affected Member and Non-Group Affected Member accounts after notification of a customer's death, BTFM breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.
- 189 By its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees to Affected Member and Non-Group Affected Member accounts after notification of a customer's death, BTFM No. 2 breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.
- 190 By its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees from Affected Member and Non-Group Affected Member accounts after notification of a customer's death, BTPS breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

Date: 29 November 2021



Signed by Gina Wilson
Maddocks
Lawyer for the Applicant



Signed by Emma Lawrence
King & Wood Malletson
Lawyer for the Respondents

Schedule of Parties

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

WESTPAC BANKING CORPORATION (ACN 007 457 141)

First Respondent

SECURITOR FINANCIAL GROUP PTY LIMITED (ACN 009 189 495)

Second Respondent

MAGNITUDE GROUP PTY LTD (ACN 086 266 202)

Third Respondent

ADVANCE ASSET MANAGEMENT LIMITED (ACN 002 538 329)

Fourth Respondent

ASGARD CAPITAL MANAGEMENT LIMITED (ACN 009 279 592)

Fifth Respondent

BT FUNDS MANAGEMENT LIMITED (ACN 002 916 458)

Sixth Respondent

BT FUNDS MANAGEMENT NO. 2 LIMITED (ACN 000 727 659)

Seventh Respondent

BT PORTFOLIO SERVICES LIMITED (ACN 095 055 208)

Eighth Respondent

Annexure A: Advice Licensees – FFNS Conduct / s 12DI(3) contraventions

Westpac	Relevant Period	Penalty Period
Ongoing Fees received from / remitted by SIPO Entities		
Number of Ongoing Fees charged/accepted after Notification of Death (NOD)	15,961	4,307
Total amount of Ongoing charged/accepted Fees paid after NOD	\$2,163,671.46	\$811,321.78
No. of Affected Members	1,528	573
Ongoing Fees received from / remitted by Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD	480	17
Total amount of Ongoing Fees charged/accepted after NOD	\$15,634.18	\$1,412.96
No. of Affected Members	47	2
Total Ongoing Fees received from / remitted by SIPO Entities and Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD	16,441	4,324
Total amount of Ongoing Fees charged/accepted after NOD	\$2,179,305.64	\$812,734.74
No. of Affected Members	1,575	575

Magnitude	Relevant Period	Penalty Period
Ongoing Fees received from / remitted by SIPO Entities		
Number of Ongoing Fees charged/accepted after NOD	2,886	1,057
Total amount of Ongoing charged/accepted Fees paid after NOD	\$517,968.55	\$205,754.84
No. of Affected Members	374	201
Ongoing Fees received from / remitted by Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD	372	188
Total amount of Ongoing Fees charged/accepted after NOD	\$48,717.41	\$21,019.23
No. of Affected Members	60	36
Total Ongoing Fees received from / remitted by SIPO Entities and Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD	3,258	1,245
Total amount of Ongoing Fees charged/accepted after NOD	\$566,685.96	\$226,774.07
No. of Affected Members	434	237

Securitor	Relevant Period	Penalty Period
Ongoing Fees received from / remitted by SIPO Entities		
Number of Ongoing Fees charged/accepted after NOD	14,330	2,956
Total amount of Ongoing charged/accepted Fees paid after NOD	\$1,071,240.41	\$360,285.00
No. of Affected Members	1,243	561
Ongoing Fees received from / remitted by Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD	1,657	320
Total amount of Ongoing Fees charged/accepted after NOD	\$119,059.94	\$27,895.07
No. of Affected Members	135	44
Total Ongoing Fees received from / remitted by SIPO Entities and Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD	15,987	3,276
Total amount of Ongoing Fees charged/accepted after NOD	\$1,190,300.35	\$388,180.07
No. of Affected Members	1,378	605

Advice Licensees Totals	Relevant Period	Penalty Period
Ongoing Fees received from / remitted by SIPO Entities		
Number of Ongoing Fees charged/accepted after NOD	33,177	8,320
Total amount of Ongoing charged/accepted Fees paid after NOD	\$3,752,880.42	\$1,377,361.62
No. of Affected Members	3,145	1,335
Ongoing Fees received from / remitted by Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD	2,509	525
Total amount of Ongoing Fees charged/accepted after NOD	\$183,411.53	\$50,327.26
No. of Affected Members	242	82
Total Ongoing Fees received from / remitted by SIPO Entities and Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD	35,686	8,845
Total amount of Ongoing Fees charged/accepted after NOD	\$3,936,291.95	\$1,427,688.88
No. of Affected Members	3,387	1,417

Annexure B: SIPO Entities – FFNS Conduct [Ongoing Fees remitted to Advice Licensees and Non-Group Advice Licensees]

AAML	Relevant Period	Penalty Period to 10 Sept 2018
Remitted to Advice Licensees		
Number of Ongoing Fees paid after NOD	23	5
Total amount of Ongoing Fees paid after NOD	\$505.77	\$487.23
No. of Affected Members	3	2
Remitted to Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	41	0
Total amount of Ongoing Fees paid after NOD	\$644.77	\$0
No. of Non-Group Affected Members	3	0
Total Ongoing Fees remitted to Advice Licensees and Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	64	5
Total amount of Ongoing Fees paid after NOD	\$1,150.54	\$487.23
No. of Affected Members and Non-Group Affected Members	6	2

ACML	Relevant Period	Penalty Period to 10 Sept 2018
Remitted to Advice Licensees		
Number of Ongoing Fees paid after NOD	4,184	781
Total amount of Ongoing Fees paid after NOD	\$450,176.76	\$129,838.02
No. of Affected Members	241	106
Remitted to Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	8,175	2,321
Total amount of Ongoing Fees paid after NOD	\$915,469.69	\$443,762.41
No. of Non-Group Affected Members	499	248
Total Ongoing Fees remitted to Advice Licensees and Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	12,359	3,102
Total amount of Ongoing Fees paid after NOD	\$1,365,646.45	\$573,600.43
No. of Affected Members and Non-Group Affected Members	740	354

BTFM	Relevant Period	Penalty Period to 10 Sept 2018
Remitted to Advice Licensees		
Number of Ongoing Fees paid after NOD	17,151	3,948
Total amount of Ongoing Fees paid after NOD	\$1,467,593.10	\$526,716.42
No. of Affected Members	2,301	935
Remitted to Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	51,450	15,835
Total amount of Ongoing Fees paid after NOD	\$3,810,043.70	\$1,584,065.80
No. of Non-Group Affected Members	6,567	3,103
Total Ongoing Fees remitted to Advice Licensees and Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	68,601	19,783
Total amount of Ongoing Fees paid after NOD	\$5,277,636.81	\$2,110,782.22
No. of Affected Members and Non-Group Affected Members	8,868	4,038

BTFM No. 2	Relevant Period	Penalty Period to 10 Sept 2018
Remitted to Advice Licensees		
Number of Ongoing Fees paid after NOD	0	0
Total amount of Ongoing Fees paid after NOD	\$0	\$0
No. of Affected Members	0	0
Remitted to Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	9	0
Total amount of Ongoing Fees paid after NOD	\$120.44	\$0
No. of Non-Group Affected Members	3	0
Total Ongoing Fees remitted to Advice Licensees and Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	9	0
Total amount of Ongoing Fees paid after NOD	\$120.44	\$0
No. of Affected Members and Non-Group Affected Members	3	0

BTPS	Relevant Period	Penalty Period to 10 Sept 2018
Remitted to Advice Licensees		
Number of Ongoing Fees paid after NOD	2,598	717
Total amount of Ongoing Fees paid after NOD	\$684,398.22	\$212,307.65
No. of Affected Members	426	166
Remitted to Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	8,424	3,031
Total amount of Ongoing Fees paid after NOD	\$2,294,111.39	\$991,548.40
No. of Non-Group Affected Members	1,346	581
Total Ongoing Fees remitted to Advice Licensees and Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	11,022	3,748
Total amount of Ongoing Fees paid after NOD	\$2,978,509.61	\$1,203,856.05
No. of Affected Members and Non-Group Affected Members	1,772	747

SIPO	Relevant Period	Penalty Period to 10 Sept 2018
Remitted to Advice Licensees		
Number of Ongoing Fees paid after NOD	23,956	5,451
Total amount of Ongoing Fees paid after NOD	\$2,602,673.85	\$869,349.32
No. of Affected Members	2,971	1,209
Remitted to Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	68,099	21,187
Total amount of Ongoing Fees paid after NOD	\$7,020,389.99	\$3,019,376.61
No. of Non-Group Affected Members	8,418	3,932
Total Ongoing Fees remitted to Advice Licensees and Non-Group Advice Licensees		
Number of Ongoing Fees paid after NOD	92,055	26,638
Total amount of Ongoing Fees paid after NOD	\$9,623,063.85	\$3,888,725.93
No. of Affected Members and Non-Group Affected Members	11,389	5,141

Annexure C: Advice Licensees – Contraventions of s 962P of the Corporations Act

NB Post-FOFA Clients only

Westpac	Relevant Period	Penalty Period
Ongoing Fees received from / remitted by SIPO Entities		
Number of Ongoing Fees charged/accepted after NOD*	1,699	1,212
Total amount of Ongoing charged/accepted Fees paid after NOD*	\$426,516.30	\$301,928.35
No. of Affected Members	235	179
Ongoing Fees received from / remitted by Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD*	0	0
Total amount of Ongoing Fees charged/accepted after NOD*	\$0	\$0
No. of Affected Members	0	0
Total Ongoing Fees received from / remitted by SIPO Entities and Non-Group SIPOs		
Number of Ongoing Fees charged/accepted after NOD*	1,699	1,212
Total amount of Ongoing Fees charged/accepted after NOD*	\$426,516.30	\$301,928.35
No. of affected Post-FOFA Clients	235	179

