

**COURT ENFORCEABLE UNDERTAKING**

**Superannuation Industry (Supervision) Act 1993**

**Section 262A**

**16 November 2021**

This Court Enforceable Undertaking is given by:

**N.M. Superannuation Proprietary Limited (NM Super)**

(ABN 31 008 428 322)

of 33 Alfred Street, Sydney, New South Wales 2000

**AMP Superannuation Limited (ASL)**

(ABN 31 008 414 104)

of 33 Alfred Street, Sydney, NSW, 2000

AND IS ACCEPTED BY:

**Australian Prudential Regulation Authority (APRA)**

of 1 Martin Place, Sydney, New South Wales 2000

under section 262A of the *Superannuation Industry (Supervision) Act 1993* (Cth).

A copy of section 262A of the *Superannuation Industry (Supervision) Act 1993* (Cth) is set out in Schedule 1.

The defined terms used in this document are defined in Schedule 2 - Glossary.

**RECITALS**

- A. APRA is the prudential regulator of the superannuation industry.
- B. The AMP Trustees, being NM Super and ASL, are both RSE Licensees and subsidiaries of AMP.
- C. APRA has been investigating past conduct that led to potential breaches of RSE licensee law by the AMP Trustees. Some of these potential breaches were referred to APRA by the Royal Commission, and some were disclosed to APRA by the AMP Trustees. The relevant matters are set out in this Undertaking.
- D. APRA has used its compulsory powers under the SIS Act to investigate the matters dealt with in this Undertaking. APRA notes that the AMP Trustees have cooperated with the investigations.
- E. APRA has formed the view that various aspects of the AMP Trustees' past conduct are likely to have constituted breaches of RSE licensee law (including the SIS Act, SIS Regulations and applicable Prudential Standards). APRA's concerns in relation to this conduct are set out in this Undertaking.
- F. The AMP Trustees acknowledge APRA's concerns, accept that remediation of certain

members is appropriate in relation to certain aspects of the past conduct, and offer this Undertaking to APRA to address and resolve those concerns.

- G. In June 2019, APRA imposed Additional Conditions on the AMP Trustees' RSE licences and issued the Directions to the AMP Trustees.
- H. An independent expert was appointed by the AMP Trustees (and approved by APRA) to deliver an initial report. The independent expert continued to report routinely on the AMP Trustees' progress against meeting the Additional Conditions and Directions for the following two years.
- I. APRA has observed, and continues to observe, considerable improvements to the AMP Trustees' governance, systems, controls and processes, which it has taken into account in accepting this Undertaking. Notwithstanding this, the AMP Trustees acknowledge that APRA considers the historical matters identified in this Undertaking warrant further steps being taken to address the conduct identified.
- J. This Undertaking is accepted by APRA as a means of ensuring that the AMP Trustees identify and address the root causes of the prudential issues which have been identified in this Undertaking, remediate members for losses which they may have sustained as a result of the AMP Trustees' conduct, and that the AMP Trustees' continue to uplift their risk management, governance controls, and processes for acting in members' best financial interests.

## **BACKGROUND**

### **APRA**

- 1. Under section 262A(1) of the SIS Act, APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a function or power under the SIS Act, the SIS Regulations or the Prudential Standards. Under section 2C of the *Acts Interpretation Act 1901*, references to a 'person' in Commonwealth legislation include a body corporate.

### *The AMP Trustees and relevant AMP Group companies*

- 2. NM Super and ASL are both RSE Licensees under s 29D of the SIS Act.
- 3. Since about 28 June 2019, NM Super and ASL have both been wholly-owned subsidiaries of AMP Wealth.
- 4. Until about 28 June 2019, NM Super and ASL were both wholly-owned subsidiaries of AMP Life. AMP Life was, in turn, a wholly-owned subsidiary of AMP. On about 30 June 2020, AMP sold AMP Life.
- 5. Prior to 15 May 2020:
  - a. ASL was trustee of the following RSEs:
    - i. AMP Superannuation Savings Trust;
    - ii. AMP Retirement Trust;
    - iii. AMP Eligible Rollover Fund.
  - b. NM Super was the trustee of the following RSEs:

- i. National Mutual Retirement Fund;
  - ii. Super Directions Fund;
  - iii. National Mutual Pro-Super Fund;
  - iv. Wealth Personal Superannuation and Pension Fund; and
  - v. The Retirement Plan.
6. At or about the time of the sale of AMP Life, AMP further simplified its superannuation business by migrating ASL's members into the Super Directions Fund by Successor Fund Transfer. AMP Superannuation Savings Trust and AMP Retirement Trust were subsequently wound up. ASL retired as trustee of AMP Eligible Rollover Fund from 30 June 2020. ASL is still an RSE Licensee, but it is no longer trustee of any funds and has cancelled the registration of the RSEs listed at paragraph 5a above. NM Super retired as trustee of National Mutual Retirement Fund, National Mutual Pro-Super Fund, and The Retirement Plan effective from 30 June 2020.
7. NM Super is now trustee of the following RSEs (which are the only RSEs in the AMP superannuation business):
  - a. Super Directions Fund; and
  - b. Wealth Personal Superannuation and Pension Fund.
8. As RSE Licensees, the AMP Trustees must comply with the SIS Act, the SIS Regulations and the Prudential Standards.
9. AMP is also the ultimate holding company of a number of other financial services providers, including AMP Bank, AMP Wealth and NMMT.

## **THE MATTERS AND APRA'S CONCLUSIONS**

### *The Royal Commission Referrals and APRA's Formal Investigation*

10. On 15 January 2019, APRA commenced a formal investigation pursuant to subsection 263(1) of the SIS Act into suspected contraventions of the SIS Act by ASL and NM Super as trustees of the RSEs listed at paragraph 5 above (**Formal Investigation**). The following issues were the subject of the Formal Investigation:
  - a. the AMP Trustees' outsourcing arrangements;
  - b. the level of oversight provided by the AMP Trustees in respect of their outsourcing arrangements; and
  - c. the way in which the AMP Trustees managed conflicts of interest in respect of outsourcing arrangements(together, the **Outsourcing Referral**).
11. On 1 February 2019, the Royal Commission published its Final Report. The Final Report referred several matters to APRA. The matters relevant to this Undertaking included:
  - a. the AMP Trustees' failure to refund premiums charged to members' superannuation accounts after death, and continuing to charge insurance premiums once notified of members' deaths until finalisation of the claim, until July 2018 (**Deceased Estates**

**Referral Matter); and**

- b. ASL's apparent failure to provide default insurance to MySuper members between 2014 and 2019 (**MySuper Insurance Referral Matter**).
- 12. On 5 March 2019, APRA notified the AMP Trustees that the scope of the Formal Investigation had been expanded to include, amongst other things, the Deceased Estates Referral Matter and the MySuper Insurance Referral Matter.
- 13. On 13 June 2019, APRA imposed the Additional Conditions on the AMP Trustees' RSE Licences and gave the AMP Trustees the Directions. The Additional Conditions and Directions covered, among other things, prudential issues relating to the Outsourcing Referral, and broader concerns relating to the AMP Trustees' risk management frameworks and governance (including accountability).
- 14. The Additional Conditions and Directions required the AMP Trustees to appoint an independent expert approved by APRA to conduct independent external reviews in relation to the AMP Trustees' risk management framework, governance structure and operating model, and to assess the AMP Trustees' level of compliance with the Additional Conditions and Directions.
- 15. An independent expert was appointed to deliver an initial report, and then additional reports routinely for the following two years, on progress against meeting the Additional Conditions and Directions. The first report was delivered on 9 August 2019.
- 16. On 17 December 2019, APRA imposed the Additional Directions on the AMP Trustees.
- 17. Subsequent reports from the independent expert included a review of these Additional Directions. The reports progressively reviewed and confirmed improved outcomes following the work undertaken on the design and operational effectiveness of, processes implemented to meet the Additional Conditions and Directions, including the Risk Management Framework (**RMF**) and Trustee Operating Model (**TOM**).

*Deceased Estates Referral Matter*

- 18. On 26 June 2018, APRA received a Breach Report in relation to ASL's failure to refund (in part or in full) life insurance premiums that had been charged to members' superannuation accounts after death, in breach of ss 52(2)(b) and 29VC of the SIS Act.
- 19. On 13 November 2018, APRA received a Breach Report in relation to NM Super's failure to refund (in part or in full) life insurance premiums that had been charged to members' superannuation accounts after death, in breach of ss 52(2)(b) and 29VC of the SIS Act.
- 20. APRA considers, based on its investigations, that ASL and NM Super failed to refund (in part or in full) life insurance premiums that it charged to members' superannuation accounts after death, in breach of ss 52(2)(b) and 29VC of the SIS Act. APRA notes that the financial impact to affected members has been remediated.
- 21. APRA is concerned that the AMP Trustees did not apply sufficient oversight to ensure they did not charge premiums to members in circumstances where they had no legal entitlement to do so.
- 22. APRA notes that on 26 May 2021, ASIC commenced civil penalty proceedings alleging that ASL and NM Super charged life insurance premiums, and ASL charged advice fees, to certain members following notification of their death. This Undertaking does not intend to deal further with those aspects of this matter that are currently before the Court in the proceedings commenced by ASIC.



*MySuper Insurance Referral Matter*

23. On 29 June 2018, APRA received a Breach Report in relation to ASL's failure to provide a subset of Delinked Members with default MySuper insurance.
24. On 8 May 2019, ASL notified APRA that 2,353 members were identified as not having been provided default MySuper insurance despite meeting the eligibility criteria.
25. On 8 November 2019, ASL advised APRA that the review and remediation of the MySuper Insurance Referral Matter had been completed. ASL described the incident as "an isolated one-off project error" which did not require any rectification of existing processes. Remediation was completed by providing default death and TPD insurance to affected members from 1 January 2014, who up until that stage had not been provided such insurance.
26. APRA has formed the view that the failure of ASL to provide default death and TPD insurance likely constitutes a breach of section 68AA(1) of the SIS Act.
27. The members affected by the MySuper Insurance Referral Matter were remediated by ASL, which involved the AMP Trustees:
  - a. providing death and TPD insurance cover from 1 January 2014 to 31 August 2019 for open members;
  - b. providing death and TPD insurance cover from 1 January 2014 to the date of exit for exited members or the date of death for deceased members; and
  - c. for open accounts, members were provided with the option to keep their insurance, opt-in to retain their insurance, or cancel their insurance by 31 August 2019.

*Working Cash Account Matter*

28. On 2 September 2019, NM Super submitted a Breach Report to APRA (and a breach report to ASIC) in relation to decisions made on behalf of NM Super to remove a working cash account fee on certain superannuation products offered through its Wealth Personal Superannuation and Pension Fund, and to offset the revenue impact (at an AMP Group level) by agreeing that AMP Bank could reduce the interest it paid on the Working Cash Accounts of those members, between May 2017 and December 2019 (**Working Cash Account Matter**).
29. In its Breach Report to APRA, NM Super stated that it had assessed that the following obligations under the SIS Act had been breached (in addition to breaches of the Corporations Act):
  - a. section 109 of the SIS Act;
  - b. subsection 52(2)(c) of the SIS Act; and
  - c. subsection 52(2)(d) of the SIS Act.
30. APRA considers, based on its investigation that:
  - a. while it appears that the arrangement was intended to result in a neutral financial outcome for members, agreeing to the reduced crediting rate was not in the members' best interests as required under section 52(2)(c) of the SIS Act;
  - b. NM Super likely failed to manage actual conflicts of interest to the standard required

- under section 52(2)(d) of the SIS Act; and
- c. NM Super failed to manage a non-arm's length transaction with a related party according to the requirements of section 109 of the SIS Act. APRA also has concerns as to how the changes to the fees and interest to be paid on the working cash accounts were disclosed to members.
31. APRA considers NM Super members were adversely affected by the Working Cash Account Matter and need to be remediated accordingly by NM Super.

*Erosion Matter*

32. On 18 February 2020, 2 March 2020 and 31 July 2020, APRA received Breach Reports and updates on behalf of the AMP Trustees. The Breach Reports and updates stated, in summary, that from at least 2014 to 2019 the AMP Trustees failed to give adequate consideration as to whether the cost of insurance cover was inappropriately eroding the retirement incomes of beneficiaries, as required by sections 52(7)(b) and (c) of the SIS Act.
33. On 28 May 2021, a breach closure report was lodged with APRA stating, among other things, following the conclusion of its internal investigations, that no breach of section 52(7)(c) of the SIS Act had occurred by the AMP Trustees because:
- a. the insurance cover the AMP Trustees provided was of a reasonable cost and value; and
  - b. the cost did not inappropriately erode the retirement income of members.
34. APRA considers, based on its investigation, that the approach adopted in the past by the AMP Trustees' in the Insurance Management Framework may not necessarily have been adequate to ensure they were only ever offering or acquiring insurance of a kind or at a level that would not inappropriately erode the retirement income of beneficiaries. At a minimum, it did not reflect best practice (**Erosion Matter**).
35. AMP has indicated to APRA that it has taken steps during 2019 to 2021 to uplift its processes in relation erosion management. In particular, AMP has adopted an erosion analysis tool, an Erosion Management Guideline (based on a default erosion threshold of 1% of salary) and has embedded enhanced controls relating to the inappropriate erosion of retirement incomes.
36. APRA is concerned to ensure that AMP is applying, and will continue to apply, the Erosion Management Guideline according to its terms.

*Compass Matter*

37. On 6 May 2020, a Breach Report was lodged with APRA by NM Super regarding NM Super's failure to allocate or refund to members contributions received from the employers for those members. The contributions totaled \$2,300,000 and were all administered through the Compass Platform between around January 2018 and March 2020 (**Compass Matter**).
38. NM Super has recognised in submitting a Breach Report that the failure to allocate these contributions to members over the period constituted a breach of subsection 7.07H(2) of the SIS Regulations, which is a condition imposed on NM Super's licence by subsection 29E(1)(a) of the SIS Act.
39. NM Super contracted the day-to-day administration and operation of the RSEs of which it was trustee to related parties within the AMP Group. This included the management

and oversight of breach identification, rectification and remediation processes.

40. APRA considers, based on its investigation, that:
  - a. from at least March 2017, and likely from as early as May 2016, employees within the AMP Group were aware that some payments processed through the Compass Platform were not being allocated to members. A funding request was made in September 2018 to fix the issue from a technical perspective but this was not approved in light of the planned decommissioning of the Compass Platform;
  - b. the AMP Trustees' Board was first alerted to the fact that there were payments which were not being allocated to members on 12 February 2019; and
  - c. NM Super likely breached section 52(2)(b) of the SIS Act by delegating to AMP certain parts of its incident and breach management function without putting in place the controls necessary to ensure effective management and oversight of subsection 7.07H(2) of the SIS Regulations.
41. APRA considers NM Super members were adversely affected by the Compass Breach. The affected members identified by AMP were remediated by the AMP Trustees. Remediation was completed on 19 March 2020 at a cost of \$2,300,000.
42. NM Super has since decommissioned the Compass Platform.

*ADA Matter*

43. On 8 September 2020, a Breach Report was lodged with APRA by NM Super (as the then relevant trustee) identifying potential breaches of sections 29SAA and 29WA of the SIS Act, regarding ASL's failure to invest certain members' superannuation contributions in a MySuper product from at least 1 January 2014, and failing to attribute certain members' Accrued Default Amounts to a MySuper product between 2014 and 2017 (**ADA Matter**).
44. The AMP Trustees contracted the day-to-day administration and operation of the RSEs of which they were (and in the case of NM Super, remain) trustees to related parties within the AMP Group. This included the management and oversight of breach identification, rectification and remediation processes.
45. APRA considers, based on its investigation, that issues regarding the transition to MySuper were first raised with NM Super on 25 January 2019 by a financial adviser who queried why two members in an employer plan (who had not made an investment election) had not been transitioned to MySuper accounts.
46. NM Super has yet to complete its investigation to identify precisely the number of affected members or to determine the appropriate remediation.
47. NM Super (which is now the relevant trustee) recognised in submitting a Breach Report that:
  - a. ASL breached section 29SAA(1)(a) of the SIS Act when it failed to transfer the impacted members' Accrued Default Amounts to MySuper by 1 July 2017; and
  - b. ASL breached section 29WA(2) of the SIS Act when it failed to invest the superannuation contributions of impacted members in MySuper from 1 January 2014.
48. In August 2021, NM Super advised APRA that the total number of potentially impacted



members was 7,663 and that some remediation activities were underway but that investigations were continuing to confirm the appropriate remediation approach. Remediation of all impacted cohorts of members is expected to be completed in January 2022.

49. APRA is concerned that:
- a. the AMP Trustees likely breached section 52(2)(b) of the SIS Act by delegating to AMP certain parts of its incident and breach management function without putting in place the controls necessary to ensure effective management and oversight of the MySuper transition;
  - b. the AMP Trustees may have failed to identify and investigate the ADA Breach, and remediate impacted members in a timely manner such that the investigation and remediation is still not complete; and
  - c. NM Super may have breached section 29WA(2) of the SIS Act from the time that it became the relevant Trustee, namely 15 May 2020.

### **APRA'S CONCERNS**

50. Based on its investigations into the matters set out at paragraphs 10 to 49 above, APRA is concerned that, in relation to those particular matters:
- a. the AMP Trustees demonstrated poor risk management practices, such that there was an inability to satisfactorily identify, assess, manage, mitigate and monitor material risks that may have affected the AMP Trustees' ability to meet their obligations to members. In particular, APRA is concerned that the AMP Trustees:
    - i. did not report certain breaches to APRA with adequate timeliness;
    - ii. have lacked urgency in remediating certain breaches;
    - iii. at times did not follow incident management processes, leading to delays in escalating potential breaches to the relevant breach committees;
    - iv. did not give priority in all instances to compliance with SIS Act obligations;
    - v. delegated responsibilities to related entities and committees without adequate processes and controls in place to ensure that the AMP Trustees' Board met its obligations under the SIS Act; and
    - vi. were overly-reliant on inadequate systems (some of which were legacy systems) and technology to fulfil SIS Act obligations;
  - b. the AMP Trustees made decisions which were not in their members' best interests;
  - c. the AMP Trustees made decisions in which, when faced with conflicts between the interests of their members and other interests (for example, the interests of the AMP Group), they failed to promote the interests of their members;
  - d. NM Super negotiated with related parties in the AMP Group under arrangements in place at the time other than at arm's length in respect of certain matters.
51. A table setting out which provisions of the SIS Act and/or SIS Regulations the AMP Trustees may have breached in each of the matters set out at paragraphs 18 – 31 and 37 - 49 above is set out at Schedule 3.



52. APRA notes that rectification plans and projects have been instigated voluntarily by NM Super in relation to the Working Cash Account Matter, Compass Matter, Erosion Matter and ADA Matter.
53. APRA also acknowledges that remediation has been completed voluntarily by NM Super in relation to the MySuper Insurance Matter, Compass Matter, and is still being completed by NM Super in relation to the ADA Matter.
54. Notwithstanding progress made on the rectification plans and projects set out at paragraph [52] above, APRA is concerned to ensure that NM Super further embeds a culture of sound governance and risk management, and that the AMP Trustees continue to improve prioritisation of member interests.

## **RESPONSE TO APRA'S CONCERNS**

55. The AMP Trustees acknowledge that APRA's concerns relating to the conduct set out above at paragraphs 50 to 54 above are reasonably held.
56. In relation to the Working Cash Account Matter and the ADA Matter, NM Super accepts that members may require remediation for any losses sustained as a result of the likely breaches of SIS Act obligations, on the basis set out in paragraph 73 below.
57. Further, the AMP Trustees have confirmed to APRA that they have undertaken the following:
  - a. enhanced the AMP Trustees' governance framework, including the appointment of eight independent non-executive directors and the establishment of the Board Risk Committee;
  - b. matured the Superannuation Trustee Office;
  - c. implemented and strengthened the risk and control identification, assessment and monitoring framework and policy framework to underpin the risk management practices of the AMP Trustees and their related service providers; and
  - d. reduced complexity, and implemented improvements to ensure the operational effectiveness of the RMF and TOM.

## **UNDERTAKINGS**

58. Under section 262A of the SIS Act, the AMP Trustees have offered the undertakings in paragraphs 58 to 77 and APRA has agreed to accept those undertakings to address and resolve APRA's concerns.

## **Rectification and Remediation**

59. The following steps provide for the AMP Trustees to undertake a review to identify the root causes of the matters giving rise to APRA's concerns, including any deficiencies in governance, risk management and compliance, and implement a program to rectify issues identified. In requiring the AMP Trustees to undertake these steps, it is APRA's intention to obtain assurance that AMP's current practices and policies are operating effectively.

*A. Review*

60. Within 115 days of the Commencement Date, or within such further time as is agreed in writing with APRA, the AMP Trustees will complete a review by way of self-assessment of internal practices relevant to each of APRA's concerns, to assess the extent to which current policies, processes and controls, if followed, would have been adequate to prevent the matters that are the subject of this Undertaking, and identify improvements that should be made to avoid risk of similar conduct.
61. So as to address APRA's concerns relating to the matters set out above at paragraphs 50 to 54, the outcomes of the Review are to include identification of:
  - a. root causes of the matters giving rise to APRA's concerns; and
  - b. improvements to avoid the risk of similar conduct in the future.
62. The Review will include, at minimum, a review of the following:
  - a. the effectiveness of the implementation of the following AMP Trustees' current practices and policies:
    - i. Insurance Management Framework, including the Erosion Management Guideline since its introduction on 28 February 2020;
    - ii. Incident, Issue and Breach Management Policy; and
    - iii. Customer Compensation and Remediation Policy.
  - b. the AMP Trustees' incident management process, including the framework for escalation of issues, incidents and breaches, and the effectiveness and timeliness of response to escalated issues, incidents and breaches;
  - c. the AMP Trustees' remediation processes, including the timeliness of the AMP Trustees' review and decision-making in relation to remediation implementation;
  - d. the AMP Trustees' processes and controls for, and level of oversight of, functions undertaken by other bodies or entities within the AMP Group; and
  - e. the AMP Trustees' systems, processes and controls for complying with sections 29SAA(1), 29WA(2), and 68AA, 52(2)(b), (c) and (d) and 109 of the SIS Act, and Reg. 7.07H(2) of the SIS Regulations.
63. Within 15 business days of the conclusion of the Review, the AMP Trustees will:
  - a. report to APRA the outcomes of the Review; and
  - b. seek feedback from the Independent Expert as to the adequacy of the AMP Trustees' assessment of the implementation of the Erosion Management Guideline, and subsequently undertake such further review steps as recommended by the Independent Expert.

*B. Rectification Program*

64. Within 60 days of the completion of the Review, or within such further time as is agreed in writing with APRA, the AMP Trustees will develop a Rectification Program to address any issues identified by the Review outlined at paragraph 60. The Rectification Program is to set out:
- a. the root causes and compliance problems identified by the AMP Trustees as part of the Review (see paragraph 61a above);
  - b. a timeline to implement the improvements identified in the Review (see paragraph 60 above);
  - c. the project management arrangements required to implement those improvements, including identification of a program manager;
  - d. the roles responsible for executing the Rectification Program;
  - e. the governance framework that will monitor progress of the Rectification Program through to completion, including review by the Independent Expert appointed in accordance with paragraph 70 below;
  - f. a framework for progress-reporting to APRA on not less than a quarterly basis, and provision of a final report to APRA at the conclusion of the Rectification Program, with such reports to:
    - i. detail the progress of the AMP Trustees in implementing the Rectification Program;
    - ii. identify any risks to timely implementation of the Rectification Program;
    - iii. include any proposals for amendment of the Rectification Program; and
    - iv. include the views of the Independent Expert.
65. Within 15 business days of the development of the Rectification Program required under paragraph 64, or such other time period as agreed in writing with APRA, the AMP Trustees will seek input from the Independent Expert as to the appropriateness of the proposed Rectification Program to address the Review outcomes described at paragraph 61.
66. Within 15 business days, or such other time period as agreed in writing with APRA, of being advised of the Independent Expert's recommendations as sought under paragraph 63b and 65, the AMP Trustees will:
- a. incorporate into the proposed Rectification Program the reasonable recommendations of the Independent Expert;
  - b. report to, and seek any recommendations from, APRA as to the proposed Rectification Program and any recommendations of the Independent Expert.
67. Within 30 days, or such other time period as agreed in writing with APRA, of being advised of APRA's recommendations as sought under paragraph 66b, the AMP Trustees will:
- a. incorporate into the proposed Rectification Program any reasonable recommendations from APRA; and

- b. commence implementing the Rectification Program in accordance with its terms, including reporting to APRA.
68. The Rectification Program may be amended to take into account any regulatory or legislative changes. Proposed changes to the Rectification Program will not take effect until reviewed by the Independent Expert and agreed in writing with APRA.

*C. Independent expert*

69. Within 30 days of the Commencement Date, or within such further time as is agreed in writing with APRA, the AMP Trustees will:
- a. nominate an Independent Expert who has expertise in compliance and risk management, and is independent of the AMP Trustees and their related bodies corporate and officers, to assess and report on:
    - i. the adequacy of the Rectification Program and any recommendations in relation to the Rectification Program; and
    - ii. progress in accordance with the Rectification Program; and
    - iii. completion of the Rectification Program; and
  - b. seek APRA's approval of the Independent Expert and its terms of engagement.
70. Within 30 days, or within such further time as is agreed in writing with APRA, of being provided with APRA's approval of the appointment of the Independent Expert sought under paragraph 69b, the AMP Trustees will appoint the Independent Expert, at their own expense, in accordance with the terms set out at paragraph 69 above.
71. The terms of engagement of the Independent Expert must include:
- a. that the Independent Expert will provide written reports addressing the matters set out in paragraphs 63b and 69a above, within a specified timeframe;
  - b. a requirement that the Independent Expert's reports identify the:
    - i. people that have assisted the Independent Expert and the nature of the assistance provided;
    - ii. personnel that have been interviewed by or on behalf of the Independent Expert;
    - iii. documents that have been reviewed by the Independent Expert; and
    - iv. documents or extracts of documents most relevant (in the view of the Independent Expert) in producing the report.
72. The AMP Trustees are to assist the Independent Expert to perform its role, including by:
- a. permitting the Independent Expert, to the extent that is reasonable having regard to the requirements of this Undertaking:
    - i. to have access to their books (noting that this clause should not be construed as waiving privilege over any material in respect of which the AMP Trustees have a valid claim for legal professional privilege);



- ii. to interview any present employee;
  - iii. to consult with APRA and disclose to APRA any information obtained in the course of carrying out its review; and
  - iv. to permit the Independent Expert to receive any additional information and books that APRA determines is appropriate to be provided to the Independent Expert;
- b. giving the Independent Expert any information or explanation reasonably requested by the Independent Expert regarding any matter connected with carrying out the tasks outlined in the Independent Expert's engagement; and
  - c. providing reasonable access and assistance to the Independent Expert and taking all reasonable steps to allow the Independent Expert to be able to fulfil the terms of its appointment.

*D. Remediation*

- 73. Within 140 days of the Commencement Date, NM Super will prepare and submit to APRA for its approval (such approval not to be unreasonably withheld) remediation action plans for the Working Cash Account Matter and the ADA Matter.
- 74. The remediation action plans will apply the following remediation principles:
  - a. affected members will, to the extent possible, be remediated to the position they would have been in had the conduct not occurred, having regard to a reasonable assessment of the affected members loss (where applicable);
  - b. subject to a. above, in relation to the Working Cash Account Matter, NM Super will estimate the interest rate that would reasonably have applied to the relevant Working Cash Accounts between May 2017 and December 2019 had the rate been negotiated separately from the removal of the working cash account fee and at arms-length, and will remediate affected members by reference to that difference; and
  - c. subject to a. above, in relation to the ADA Matter, NM Super will determine the full cohort of impacted members and calculate remediation had member contributions been invested and transferred at the correct time. NM Super will allow members who were not provided insurance for the impacted period the opportunity to claim if otherwise eligible.
- 75. The AMP Trustees will appoint an actuary to assess impacted members and compensation methodology for the ADA and Working Cash Account Matters in accordance with the remediation action plans.
- 76. The AMP Trustees will provide remediation in accordance with the remediation action plans, such remediation to be completed within the later of 230 days of the Commencement Date or 110 days of APRA's approval of the remediation action plans, or otherwise within such further time as is agreed in writing with APRA.

*E. Other*

- 77. The AMP Trustees will report to APRA when NM Super has satisfied its obligations under this Undertaking (including the provision of supporting information and documentation to verify this), and will report any conduct to APRA that might amount to a breach of the terms of this Undertaking.

## **ACKNOWLEDGEMENTS**

78. This Undertaking addresses and resolves APRA's concerns in respect of the matters identified at paragraphs 18 to 49 above:
- a. to the extent relevant information concerning those matters has been fully disclosed by the AMP Trustees prior to APRA's acceptance of this Undertaking; and
  - b. subject to APRA being satisfied as to the AMP Trustees' compliance with the terms of this Undertaking.
79. In giving the undertakings outlined in this Undertaking, the AMP Trustees acknowledge that:
- a. the date of commencement of this Undertaking is the date that it is accepted by APRA;
  - b. upon any breach of the terms of this Undertaking, APRA may take such regulatory action as it considers appropriate in the circumstances, including enforcement action and other regulatory responses;
  - c. this Undertaking is given voluntarily and the AMP Trustees have obtained legal advice in relation to their obligations under (and the effect of) this Undertaking;
  - d. this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Undertaking or arising from any other conduct;
  - e. APRA intends to:
    - i. issue a media release on execution of this Undertaking, referring to its terms and to the concerns which led to APRA accepting this Undertaking;
    - ii. from time to time refer publicly to this Undertaking; and
    - iii. publish this Undertaking on APRA's website.
  - f. if any part of this Undertaking is held invalid that such part shall be severed from this Undertaking and the remainder of this Undertaking will continue to be valid and enforceable;
  - g. the references to provisions of Commonwealth Acts of Parliament in this Undertaking shall include references to those provisions as amended from time to time and in the event of a repeal of any of them, any equivalent provision from time to time;
  - h. for the purposes of this Undertaking, any correspondence may be sent by email to the Superannuation Trustee Executive on behalf of the AMP Trustees and to the Executive Director of the Superannuation Division of APRA and/or to the email of the General Manager of the Superannuation Branch of the Superannuation Division of APRA; and
  - i. this Undertaking may be varied at any time pursuant to section 262A of the SIS Act. Any such variation must be made in writing and authorised by an APRA General Manager or above.

## EXECUTION & ACCEPTANCE

Executed by **AMP Superannuation Limited (ABN 31 008 414 104)** in accordance with section 127 of the *Corporations Act 2001* (Cth)

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Tony Brain  
Chair/Director

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Trevor Dixon  
Company Secretary

Dated: 16 November 2021

Executed by **N.M. Superannuation Proprietary Limited (ABN 31 008 428 322)** in accordance with section 127 of the *Corporations Act 2001* (Cth)

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Tony Brain  
Chair/Director

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Trevor Dixon  
Company Secretary

Dated: 16 November 2021

Accepted by **the Australian Prudential Regulation Authority** under section 262A(1) of the Act by its delegate

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Adrian Rees  
General Manager, Superannuation

Dated: 16 November 2021

**SCHEDULE 1 - SECTION 262A OF THE SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 (CTH)**

**Acceptance and enforcement of undertakings**

- (1) The Regulator may accept a written undertaking given by a person in connection with a matter in relation to which the Regulator has a function or power under this Act, the regulations or the prudential standards.
- (2) The person may withdraw or vary the undertaking at any time, but only with the Regulator's consent.
- (3) If the Regulator considers that the person who gave the undertaking has breached any of its terms, the Regulator may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.



## SCHEDULE 2 - GLOSSARY

TERM	DEFINITION
<b>Accrued Default Amounts</b>	the definition provided in section 208 of the SIS Act, namely the total amount attributed by a trustee to a member where either the: <ol style="list-style-type: none"> <li>member has given the trustee of the fund no direction on the investment option in which the amount is to be invested; or</li> <li>the investment option in which the total amount is invested is one which, under the current governing rules of the fund, would be the investment option for a new member if no direction were given.</li> </ol>
<b>Additional Conditions</b>	the conditions imposed on the AMP Trustees' RSE Licences on 13 June 2019 to address board composition and renewal; the AMP Trustees' governance and risk management frameworks and strategic planning and member outcomes.
<b>Additional Directions</b>	the directions imposed on the AMP Trustees by APRA on 17 December 2019 relating to the AMP Trustees' governance and risk management frameworks.
<b>AMP</b>	AMP Limited (ABN 49 079 354 519).
<b>AMP Bank</b>	AMP Bank Limited (ABN 15 081 596 009).
<b>AMP Life</b>	AMP Life Limited (ABN 84 079 300 379).
<b>AMP Group</b>	relevantly, AMP, AMP Wealth, ASL, NM Super, AMP Bank, and their subsidiaries and related entities.
<b>AMP Trustees</b>	NM Super and ASL collectively.
<b>AMP Wealth</b>	AMP Wealth Management Holdings Pty Ltd (ABN 46 633 106 939).
<b>APRA</b>	Australian Prudential Regulation Authority.
<b>ASIC</b>	Australian Securities and Investments Commission.
<b>ASL</b>	AMP Superannuation Limited (ABN 31 008 414 104).
<b>Breach Report</b>	a breach report required to be submitted by an RSE Licensee under section 29JA of the SIS Act.
<b>Commencement Date</b>	the date that this Undertaking is accepted by APRA.
<b>Compass Platform</b>	a product administration computer system previously used by the AMP Trustees.
<b>Delinked Members</b>	members who leave an employer-sponsored plan within a super fund but remain with the super fund provider and are moved to a different product. This process usually occurs when the fund is notified that the member is no longer an employee of the respective employer and as such do not meet the eligibility criteria to remain a member of the employer-sponsored plan.
<b>Directions</b>	the directions imposed on the AMP Trustees by APRA pursuant to section 131D of the SIS Act on 13 June 2019 relating to board composition and renewal; strategic planning and member outcomes; outsourcing / related party arrangements and responses to open breaches.
<b>Erosion Management Guideline</b>	AMP Erosion Management Guideline effective 28 February 2020.
<b>Final Report</b>	the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, tabled in Parliament on 4 February 2019.

TERM	DEFINITION
<b>Incident, Issue and Breach Management Policy</b>	the AMP Incident, Issue and Breach Management Policy.
<b>Independent Expert</b>	an expert who has the necessary expertise in compliance and risk management; and at the time of the appointment, the Independent Expert and the Independent Expert's staff are independent of the RSE Licensee and the AMP Group and do not have conflicts of interest and/or conflicts of duty in relation to the proposed appointment.
<b>Insurance Management Framework</b>	the AMP Trustees' Insurance Management Framework pursuant to Prudential Standard SPS 250 - Insurance in Superannuation.
<b>Member</b>	a 'beneficiary' as defined in section 10 of the SIS Act, being a "person with a beneficial interest in the fund, scheme or trust and includes, in relation to a superannuation fund, a member of the fund".
<b>MySuper</b>	the default superannuation product to be offered by authorised RSE Licensees pursuant to sections 29SAA(1)(a)(i) and 29WA(2) of the SIS Act.
<b>MySuper members</b>	the definition in section 10 of the SIS Act, being a member of a regulated superannuation fund who holds a beneficial interest in the fund of a class that the RSE Licensee of the fund is authorised to offer as a MySuper product.
<b>NM Super</b>	N.M. Superannuation Proprietary Limited (ABN 31 008 428 322).
<b>NMMT</b>	NMMT Limited (ABN 42 058 835 573).
<b>Prudential Standards</b>	a standard determined by APRA under subsection 34C(1) of the SIS Act.
<b>Risk Management Framework (RMF)</b>	the structure, governance and guidelines utilised to minimise and manage risk. RMF's are made up of a Risk Appetite Statement (RAS), Risk Management Strategy (RMS), dedicated business functions, systems, policies, procedures and controls to mitigate risk and are subject to periodic reviews to ensure the RMF is designed and operating effectively.
<b>Royal Commission</b>	the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.
<b>RSE</b>	a registrable superannuation entity as defined under s 10 of the SIS Act.
<b>RSE Licence</b>	a licence granted by APRA under section 29D of the SIS Act to a registrable superannuation entity.
<b>RSE Licensee</b>	a registrable superannuation entity holding an RSE Licence granted by APRA under section 29D of the SIS Act.
<b>RSE Licensee Law</b>	RSE Licensee law as defined in section 10 of the SIS Act.
<b>SIS Act</b>	the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
<b>SIS Regulations</b>	the <i>Superannuation Industry (Supervision) Regulations 1994</i> .
<b>Successor Fund Transfer</b>	a transfer of members' benefits from an RSE to a successor RSE under Part 18 of the SIS Act (Amalgamation of Funds).
<b>Super Directions Fund</b>	the Super Directions Fund (ABN 78 421 957 449) (RSE R1056433). <sup>1</sup>
<b>Superannuation Trustee Office</b>	an AMP business function responsible for assisting the AMP Trustees to operate in compliance with their regulatory, fiduciary and licensing obligations.

<sup>1</sup> From 1 October 2021, AMP Super Fund.

TERM	DEFINITION
<b>Trustee Operating Model (TOM)</b>	the governance and operating model for the Trustees.
<b>TPD Insurance</b>	total and permanent disability insurance.
<b>Undertaking</b>	this Court Enforceable Undertaking offered by the AMP Trustees and accepted by APRA.
<b>Working Cash Account</b>	the direct cash portion of a platform product, primarily used for transactional purposes. Transactions include income distributions, dividends and interest for investment options as well as fee and insurance premium deductions, withdrawals, rollovers, contributions and pension payments. Members typically earn nominal interest on the amount held in the account.

**SCHEDULE 3 - TABLE OF POTENTIAL BREACHES OF SIS ACT AND SIS REGULATIONS**

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Matter</b>
Section 29JA(1) SIS Act	provides that if an RSE Licensee becomes aware that they have breached (or will breach) a condition imposed on its RSE Licence and the breach is (or will be) significant, the RSE Licensee must give APRA a written report about the breach as soon as practicable.	Compass Matter ADA Matter
Section 29SAA(1) SIS Act	requires an RSE Licensee (that has applied to offer MySuper products) to attribute to the MySuper product each amount that is an Accrued Default Amount for a member of the fund who is eligible to hold the MySuper product, unless the member directs the RSE Licensee to attribute the amount to another MySuper product or an investment option within a choice product in the fund.	ADA Matter
Section 29VC SIS Act	provides that if the trustee(s) of a regulated superannuation fund charge an activity fee or an insurance fee to a member in relation to a MySuper product, the fee must be no more than it would be if it were charged on a cost recovery basis.	Deceased Estates Referral Matter
Section 29WA(2) SIS Act	requires the trustee(s) of a fund to treat any contribution to the fund in relation to which no direction has been given, and any part of a contribution to the fund in relation to which no direction has been given, as a contribution to be paid into a MySuper product of the fund.	ADA Matter
Section 52(2)(b) SIS Act	being the covenant by the AMP Trustees to exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation, trustee would exercise in relation to an entity, of which it is trustee and on behalf of the beneficiaries of which it makes investments.	Deceased Estates Referral Matter ADA Matter Compass Matter
Section 52(2)(c) SIS Act	being the covenant by the AMP Trustees to perform the trustee's duties and exercise the trustee's powers in the best interests of the beneficiaries.	Working Cash Account Matter
Section 52(2)(d) SIS Act	being the covenant (where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons, and to comply with the prudential standards in relation to conflicts.	Working Cash Account Matter
Section 68AA SIS Act	requires each trustee of a regulated superannuation fund to ensure that the fund provides permanent incapacity benefit and death benefit to each MySuper member of the fund by taking out insurance.	MySuper Insurance Referral Matter
Section 109 SIS Act	provides that a trustee or investment manager of a superannuation entity must not invest in that capacity unless the trustee or investment manager and the other party to the relevant transaction are dealing with each other at arm's length in respect of	Working Cash Account Matter



Legislative Provision	Obligation	Matter
	the transaction.	
SIS Regulation 7.07H(2)	provides that if a trustee receives a contribution from a member (as set out in regulation 7.07H(1)) and accepts the contribution, the trustee must allocate the contribution to the member as soon as practicable, but in any case not later than 3 business days after both the contribution and the information mentioned in sub-regulation 7.07E(2) have been received by the trustee.	Compass Matter