



GPO Box 89  
Melbourne 3001  
1300 366 216  
Fax 9667 9610

**Advice centres**

Bendigo  
Blackburn  
Geelong  
Melbourne  
Traralgon

[vicsuper.com.au](http://vicsuper.com.au)

16 February 2018

Royal Commission into Misconduct in the Banking,  
Superannuation and Financial Services Industry  
Royal Commissioner Kenneth Hayne AC QC

By email: [FSRCSolicitor@royalcommission.gov.au](mailto:FSRCSolicitor@royalcommission.gov.au)

Dear Commissioner

**VicSuper submission to Royal Commission into Misconduct in the Banking,  
Superannuation and Financial Services Industry**

We write to you on behalf of VicSuper Pty Ltd (**VicSuper**), the trustee of the VicSuper Fund (**Fund**).

VicSuper has been invited to make an early written submission to the Royal Commission addressing the questions set out in the letter from Simon Daley (Solicitor Assisting the Royal Commission) dated 8 January 2018 (**Submission Invitation**).

We are pleased to provide the enclosed response.

Please treat the response as confidential. We request that VicSuper's submission not be made public or disclosed to any other party without VicSuper being provided with the opportunity to consider whether it wishes to resist such disclosure.

Yours faithfully

Michael Dundon  
Chief Executive Officer  
VicSuper Pty Ltd

Danny Hu  
General Counsel and Company Secretary  
VicSuper Pty Ltd

Encl.

# VICSUPER SUBMISSION TO ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

## INTRODUCTION

VicSuper Pty Ltd (**VicSuper**) is the corporate trustee of VicSuper Fund (**Fund**). The Fund is a not for profit public offer superannuation fund with over \$20 billion in assets and around 240,000 members as at December 2017.

VicSuper holds a Registrable Superannuation Entity (**RSE**) Licence under the *Superannuation Industry (Supervision) Act 1993* (Cth) (issued by the Australian Prudential Regulation Authority) and an Australian Financial Services Licence (**AFSL**) under the *Corporations Act 2001* (Cth) (issued by the Australian Securities and Investments Commission) which licences VicSuper to deal in, and advise on, superannuation products.

VicSuper self-administers the Fund and has approximately 290 staff providing "in-house" superannuation advice and administration services to members.

Under VicSuper's constitution, four directors are nominated by employer organisations, and four directors are nominated by bodies representing the interests of members, as determined by the directors. The directors are also shareholders of the company. The company's capital structure is not for profit with the eight directors each holding a \$1 share. Dividends are not permitted to be paid.

The responses to the questions in the Submission Invitation which follow are made to the best of the VicSuper officers' knowledge and belief after taking reasonable steps to satisfy themselves of the accuracy of the responses. The information contained in the responses is based on VicSuper business records over a period of 10 years and not on the personal knowledge of the officers.

## RESPONSES TO QUESTIONS

### Question 1

*Excluding cases of theft from the entity itself, or from an associated entity, has the entity identified any misconduct by the entity (including by its directors, officers or employees, or by anyone otherwise acting on its behalf) which occurred at any time since 1 January 2008? If so, what is the nature, extent and effect of that misconduct?*

#### 1. Response to question 1

---

#### Misconduct

1.1 Question 1 of the questions in the Submission Invitation is concerned with "misconduct" by VicSuper (including by its directors, officers or employees, or by anyone otherwise acting on behalf of VicSuper) occurring at any time since 1 January 2008.<sup>1</sup>

1.2 Misconduct is defined in the Terms of Reference as follows:

*misconduct* includes conduct that:

- (a) constitutes an offence against a Commonwealth, State or Territory law, as in force at the time of the alleged misconduct; or
- (b) is misleading, deceptive, or both; or
- (c) is a breach of trust, breach of duty or unconscionable conduct; or
- (d) breaches a professional standard or a recognised and widely adopted benchmark for conduct.

1.3 The definition of misconduct in the Terms of Reference is inclusive. Therefore, it is open for VicSuper to make a determination that a particular form of conduct which does not specifically fall within paragraphs (a) to (d) of the definition of misconduct in the Terms of Reference nevertheless amounts to misconduct for the purposes of question 1 of the Submission Invitation. In approaching the question of what amounts to misconduct (and also what does not amount to misconduct) VicSuper has had regard to the Letters Patent establishing the Royal Commission, which provide, among other things, that all Australians have the right to be treated *honestly* and *fairly* in their dealings with superannuation providers, and that the highest standards of conduct are critical to the good governance and corporate culture of superannuation providers. Further, there is reference to the desirability of Australians having *confidence* and *trust* in the financial system. VicSuper agrees with these sentiments and supports the work of the Commissioner and has provided its response in that context.

#### Identifying misconduct

1.4 VicSuper maintains records containing details of each incident it becomes aware of which may amount to a breach of any relevant law, regulation, industry standard or internal policy or procedure. Such incidents are recorded in one or more registers or

---

<sup>1</sup> In order to provide the information requested in questions 1 and 2 by 16 February 2018 (the Submission Invitation requests responses be provided by this date) it was necessary for VicSuper to limit the end of the period in respect of which the information is sought in questions 1 and 2 to 31 December 2017. In this submission this period will be referred to as the **Relevant Period**.

reports, depending on the nature of the incident and the manner in which VicSuper becomes aware of it (**Incident Records**). The Incident Records include:

- (a) the Breach and Incident Register, used to record incidents identified by VicSuper which may involve a breach of a relevant law, regulation, industry standard or internal policy or procedure which VicSuper is required to comply with;
- (b) the Member Complaints Register, used to record incidents which result in complaints from Fund members and beneficiaries, which may or may not also involve a breach of a relevant law, regulation, industry standard or internal policy or procedure; and
- (c) records relating to compensation payments, decisions of the Superannuation Complaints Tribunal, audit reports and minutes of board meetings.

1.5 VicSuper believes that the Incident Records have been maintained diligently and accurately throughout the Relevant Period, and that the records therein are a good and appropriate source of information about incidents recorded as occurring in the Relevant Period which might amount to misconduct. Accordingly, to provide the information requested in response to question 1, VicSuper reviewed the Incident Records and sought to determine, for each incident identified in the Relevant Period, whether the incident amounted to misconduct for the purposes of question 1.

1.6 However, VicSuper found it impracticable and onerous to check whether each incident identified in the Relevant Period involved conduct which:

- (a) constituted an offence against a Commonwealth, State or Territory law, as in force at the time of the alleged misconduct (paragraph (a) of the definition of misconduct in the Terms of Reference); or
- (b) breached a professional standard or a recognised and widely adopted benchmark for conduct (paragraph (d) of the definition of misconduct in the Terms of Reference).

1.7 This is because:

- (a) over the course of the Relevant Period (a period of 10 years):
  - (i) there have been very many (and significant) changes to the laws and regulations which govern the superannuation industry, as well as to relevant professional standards (regular changes to superannuation law and regulation has been - and remains - a constant feature of the superannuation industry); and
  - (ii) a number of offence provisions in the legislation governing superannuation funds have been inserted and removed during this time which have the potential to apply to inadvertent errors and "technical breaches" of relevant law occurring in the administration of a fund; and
- (b) to determine whether or not each incident identified in the Relevant Period involved, at the time of the incident, conduct constituting an offence against the law or a breach of a relevant standard, would require VicSuper to determine, in respect of each incident:

- (i) what the relevant law was and which industry standards applied at the time the incident occurred;
- (ii) whether the incident involved a breach of the relevant law or industry standard at the time the incident occurred; and
- (iii) if a breach of relevant law, whether the provision breached was an offence provision at the time the incident occurred.

- 1.8 Therefore, despite the definition of misconduct in the Terms of Reference, for the purposes of preparing a response to question 1 of the Submission Invitation by 16 February 2018 as requested, VicSuper has not considered whether incidents identified in the Relevant Period involved conduct constituting an offence against a Commonwealth, State or Territory law as in force at the time of the alleged misconduct or conduct which breached a relevant standard.
- 1.9 Importantly, however, VicSuper believes that any such incidents would in any event involve conduct which would fall below community standards and expectations, and therefore be captured in the response to question 2 of the Submission Invitation (see below).
- 1.10 Accordingly, subject to the matters referred to in paragraph 1.8 above, and having regard to the matters referred to in paragraph 1.3 above, VicSuper has identified the following cases of what it considers to be misconduct in the Relevant Period engaged in by VicSuper.

#### **Identified misconduct**

- 1.11 Each of the instances of misconduct identified by VicSuper involve misconduct by a financial adviser employed by VicSuper (and providing advice under VicSuper's AFSL). VicSuper financial advisers operate out of the VicSuper financial planning centres in Bendigo, Blackburn, Geelong, Melbourne and Traralgon (all in Victoria).

#### Financial adviser changing date of Statement of Advice

- 1.12 VicSuper identified that in July 2013 a financial adviser employed by VicSuper (operating at the VicSuper financial planning centre in Traralgon) verbally provided personal financial advice under VicSuper's AFSL to a member of the Fund. Under the relevant provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**), the adviser was required to provide a written Statement of Advice<sup>2</sup> as soon as practicable after the verbal advice was provided, and in any event VicSuper's internal procedures required the Statement of Advice to be sent within 5 business days of the advice being provided. There was a delay of 2 days before the Statement of Advice was prepared. Before sending the Statement of Advice the financial adviser changed the date of the Statement to Advice to make it appear that it had been prepared earlier than it was in fact prepared, and within the timeframe required by VicSuper's procedures.
- 1.13 Upon becoming aware of this VicSuper arranged for an audit to be undertaken to determine whether the financial adviser had done this before. VicSuper determined that the financial adviser had done this before on one other occasion, approximately six months earlier.

<sup>2</sup> A Statement of Advice is a document that helps a client understand, and decide whether to rely on, personal financial advice, and is generally required to be provided when personal financial advice is provided (see Corporations Act, Part 7.7, Division 3, Subdivision C).

- 1.14 In each case the member who was provided with financial advice received a Statement of Advice, as required by the relevant provisions of the Corporations Act, and VicSuper identified no deficiencies with the content of either Statement of Advice. The members suffered no loss. However in each case the Statement of Advice was provided outside of the time required by the Corporations Act and VicSuper's internal procedures.
- 1.15 VicSuper considers that this case involved misconduct on the basis that the financial adviser deliberately altered the date of a document with the intent of avoiding the possible consequences of being responsible for a breach of VicSuper's internal procedures (and possibly the relevant provisions of the Corporations Act concerning the timing of the provision of a Statement of Advice), albeit not conduct which caused any financial loss or other harm.

#### Financial adviser signing member form as witness without witnessing signature

- 1.16 VicSuper identified that in September 2013 a financial adviser employed by VicSuper (operating at the VicSuper financial planning centre in Geelong) received a form from a member of the Fund which was signed several days earlier without a witness (the form required that the member's signature be witnessed). The adviser signed the form as a witness to the member's signature and backdated the witness signature to the same date as the date the member signed the form.
- 1.17 Despite the member suffering no loss, VicSuper considers that the case involved misconduct on the basis that the financial adviser signed the form and backdated the date of signature with the intent to give the impression that the form had been witnessed when the member signed the form (which was false), albeit not conduct which caused any financial loss or other harm.

#### Financial adviser falsely recorded Statements of Advice as having been provided

- 1.18 VicSuper identified that in August 2011 a financial adviser employed by VicSuper (operating at the VicSuper financial planning centre in Geelong) had, on a number of previous occasions, provided personal financial advice to a member of the Fund without providing a Statement of Advice and, despite not having provided a Statement of Advice in each case, recorded on VicSuper's database that a Statement of Advice had been sent.
- 1.19 VicSuper considers that this case involved misconduct on the basis that the financial adviser knew that in each case a Statement of Advice was required to be sent to the member receiving the advice, and intentionally recorded in the relevant VicSuper database that the Statements of Advice had been sent, knowing that in fact they had not.

#### Financial adviser misconduct in context

- 1.20 During the Relevant Period there were approximately 48,000 instances of personal financial advice provided to members of the Fund by VicSuper financial advisers (measured by Statements of Advice issued in the period). Accordingly, the total number of instances of identified misconduct by VicSuper financial advisers (3) represents a very small proportion of the total.
- 1.21 To provide further context:
- (a) in the financial year 1 July 2011 - 30 June 2012 there were approximately 4,900 instances of personal financial advice provided to members of the Fund

by VicSuper financial advisers, and one instance of identified misconduct (referred to in paragraph 1.18 above); and

- (b) in the financial year 1 July 2013 - 30 June 2014 there were approximately 4,700 instances of personal financial advice provided to Fund members by VicSuper financial advisers, and 2 instances of identified misconduct (referred to in paragraphs 1.12 and 1.16 above).

1.22 Throughout the Relevant Period the total number of VicSuper financial advisers employed in each year averaged between 40 to 45.

## QUESTION 2

*Has the entity identified any conduct, practice, behaviour or business activity it has engaged in (including by its directors, officers or employees, or by anyone otherwise acting on its behalf) since 1 January 2008, which it considers has fallen below community standards and expectations? If so, what is the nature, extent and effect of that conduct, practice, behaviour or activity?*

### 2. Response to question 2

---

#### Identifying "below-standard conduct"

- 2.1 In order to identify any conduct, practice, behaviour or business activity that VicSuper (including its directors, officers or employees, or by anyone otherwise acting on its behalf) engaged in during the Relevant Period which fell below community standards and expectations ("below-standard conduct"), VicSuper reviewed the Incident Records and other relevant records, and considered whether each incident involved below-standard conduct.
- 2.2 As with the cases of misconduct, VicSuper believes that the Incident Records have been maintained diligently and accurately throughout the Relevant Period, and that the records therein are a good and appropriate source of information about incidents recorded as occurring in the Relevant Period which might amount to "below-standard conduct".
- 2.3 The review revealed that the following forms of conduct, practice, behaviour or business activity (which are referred to generically as "conduct") were engaged in by VicSuper in the Relevant Period, which VicSuper considers may have fallen below community standards and expectations.

#### Identified below-standard conduct

##### Providing financial advice that is not appropriate

- 2.4 VicSuper considers that community standards and expectations in relation to the operation and management of a superannuation fund include the standard or expectation that any financial advice given by the trustee of the superannuation fund will be appropriate to the client.<sup>3</sup> However, VicSuper has identified instances of conduct in the Relevant Period engaged in by VicSuper in which this community standard or expectation was not met.
- 2.5 The nature of the relevant conduct was the provision of financial advice by VicSuper financial advisers which was not appropriate. The advice was not appropriate in the sense that it:
- (a) failed to take into consideration the client's personal financial circumstances and needs; and/or
  - (b) caused the client financial loss (for example an increased tax liability), or had the potential to cause the client financial loss if the recommendations in the advice were implemented.

---

<sup>3</sup> This is currently reflected in, among other things, section 961G of the Corporations Act.



- 2.6 As to the extent of the conduct, according to the Incident Records, the number of cases in which financial advice was provided by VicSuper financial advisers in the Relevant Period which VicSuper identified as not appropriate was 45. While any conduct of this type is always disappointing and unwelcome, VicSuper considers that the extent of the conduct was not overly significant having regard to the relevant period of time (10 years) and the volume of financial advice provided (as previously mentioned, there were approximately 48,000 instances of personal financial advice provided by VicSuper financial advisers to Fund members in the Relevant Period).
- 2.7 The below-standard conduct included:
- (a) Fund members being advised by VicSuper financial advisers to make voluntary contributions to the Fund which either resulted in, or would have resulted in (if the member had effected the advice) an increased tax liability as a consequence of the contribution;
  - (b) the provision of advice to a member without making a recommendation in relation to the investment option in the Fund which was most suitable to the member having regard to the member's investment risk profile;
  - (c) the provision of advice to a Fund member in circumstances where the basis of the advice was not recorded or did not appear to support the advice provided; and
  - (d) the provision of advice to a Fund member in circumstances where the VicSuper employee providing the advice was only authorised to provide general financial product advice, as opposed to personal financial product advice.

Failing to process roll over and transfer requests in a timely manner

- 2.8 VicSuper considers that community standards and expectations in relation to the operation and management of a superannuation fund include the standard or expectation that a superannuation fund will promptly comply with a member's request to "roll over" or transfer benefits out of the fund into another superannuation fund elected by the member.<sup>4</sup> However VicSuper has identified instances of conduct in the Relevant Period engaged in by VicSuper in which this community standard or expectation was not met.
- 2.9 The nature of the relevant conduct was the failure to promptly comply with members' requests to roll over or transfer benefits out of the Fund, and in any case within the legislative timeframes of within 30 business days in the period 1 January 2008 to 30 June 2013 and within 3 business days in the period 1 July 2013 to 31 December 2017.
- 2.10 As to the extent of the conduct, the Incident Records show that there were 65 cases in the Relevant Period. This represents a small proportion of the total number of roll overs and transfers processed in the Relevant Period, which was approximately 95,000.
- 2.11 Examples of the conduct include:

<sup>4</sup> This is currently reflected in regulation 6.34A(1) of the *Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations)* which provides that a trustee of a superannuation fund is required to roll over or transfer benefits in accordance with a member's request as soon as practicable but in any case not later than 3 business days after receiving the roll over or transfer request.

- (a) On 16 April 2015 a Fund member's roll over request was received which quoted the membership number of a closed account of the member's, rather than the membership number of the member's active account (the member had 2 accounts - one closed and one active). The VicSuper administration staff member receiving the request wrote to the member to confirm that the member intended to roll over the active account. The member then contacted VicSuper and provided that confirmation. The VicSuper administration staff member then contacted another team member requesting that the rollover be processed in accordance with the member's request, however that team member was away on sick leave. By the time the team member returned to work it had been over 3 business days since the member's rollover request was received.
- (b) On 26 February 2016 a Fund member's roll over request was received. The request was made electronically. As a result of a system error the roll over request was not moved to the relevant electronic "work queue" for processing. The problem was discovered on 29 March 2016 upon the superannuation fund which was to receive the roll over contacting VicSuper to inquire about its status. The cause of the error was subsequently identified as a computer system error between the electronic request system and the workflow queue system.
- 2.12 If the Commissioner considers that further information would assist, VicSuper would be pleased to provide further examples or indeed the details of each case of VicSuper's failure to process a rollover or transfer request in a timely manner in the Relevant Period.
- 2.13 As to the effect of the conduct, it varied from case to case depending upon whether or not the member would have been better off (in terms of the amount of the benefit rolled over or transferred in accordance with the member's request) had the roll over or transfer been processed more promptly. Whether or not the member would have been better off depended on factors which include the investment performance of the member's benefit in the Fund in between the date the roll over or transfer should have been processed and the date that it was in fact processed.

#### Inadvertent disclosure of personal information of Fund members

- 2.14 VicSuper considers that community standards and expectations in relation to the operation and management of a superannuation fund include the standard or expectation that a superannuation fund will adequately protect fund members' personal information from unauthorised disclosure to third parties.<sup>5</sup> However, VicSuper has identified instances of conduct in the Relevant Period engaged in by VicSuper in which this community standard or expectation was not met.
- 2.15 The nature of the relevant conduct was the inadvertent disclosure by VicSuper of Fund members' personal information to third parties. Personal information inadvertently disclosed included:
- (a) names and addresses of affected members;
  - (b) value of members' benefits in the Fund; and
  - (c) contents of personal financial advice.

<sup>5</sup> This is reflected in the requirements of the *Privacy Act 1988* (Cth) (including the Australian Privacy Principles).

- 2.16 As to the extent of the conduct, the Incident Records show that there were 102 cases in the Relevant Period.
- 2.17 Examples include:
- (a) A member of the Fund made a request to withdraw their superannuation benefit from the Fund. The payment was processed but the payment confirmation letter and cheque was placed in an envelope addressed to another member.
  - (b) A Statement of Advice was to be provided electronically to a Fund member by way of uploading to the member's on-line account record. However, a Statement of Advice that related to another Fund member was uploaded instead, so that one Fund member received another member's Statement of Advice, which contained personal details in relation to that member.
- 2.18 If the Commissioner considers further information would assist, VicSuper would be pleased to provide further examples or indeed the details of each case of inadvertent disclosure of Fund members' personal details in the Relevant Period.
- 2.19 The effect of the conduct in each case was either:
- (a) the actual disclosure of a member's personal information to another person without the member's consent or authority; or
  - (b) the potential for the disclosure of a member's personal information to another person without the consent or authority of the member.
- 2.20 VicSuper is not aware of any affected member suffering financial loss as a result of the conduct.

No Statement of Advice or delay in the provision of Statements of Advice

- 2.21 VicSuper considers that community standards and expectations in relation to the operation and management of a superannuation fund include the standard or expectation that a member of the fund who receives personal financial advice will promptly receive a written record of the advice, so that the client has a clear and unambiguous record of the advice. However, VicSuper has identified instances of conduct in the Relevant Period engaged in by VicSuper in which this community standard or expectation was not met.
- 2.22 The nature of the relevant conduct was the delay or failure to send members a Statement of Advice after the provision of personal financial advice.
- 2.23 As to the extent of the conduct, the Incident Records show that there were 40 cases. Examples of the relevant conduct include:
- (a) During the period April - August 2014 there were 8 Fund members who were provided with personal financial advice at the VicSuper financial planning centre in Blackburn that were not given Statements of Advice as soon as practicable after the advice was provided. The provision of the Statements of Advice was delayed due to an unusually high volume of work in the period which occurred in the midst of significant changes to superannuation legislation.

- (b) On 17 July 2015 a Fund member met with a VicSuper financial adviser and was provided with financial advice. The member subsequently provided negative feedback in relation to VicSuper's performance through a survey. The member was contacted to find out more information for the reasons for the negative feedback and it was discovered that the member never received a Statement of Advice following the meeting with the financial adviser. The relevant Incident Report record states that the root cause of the issue was the adviser not following procedures. The member was subsequently provided with the Statement of Advice and the adviser's work was closely monitored afterwards.

- 2.24 If the Commissioner would be assisted by further details and information about the cases in which VicSuper members were not provided with a Statement of Advice or had a Statement of Advice provided after a delay, including the details of each of the cases, VicSuper would be pleased to provide this to the Commissioner upon request.
- 2.25 The effect of the conduct in each case was the affected member either did not receive a Statement of Advice after being provided with personal financial advice, or received a Statement of Advice following a delay.

#### Disclosure of incorrect or inaccurate information

- 2.26 VicSuper considers that community standards and expectations in relation to the operation and management of a superannuation fund include the standard or expectation that the information communicated to members in respect of the Fund will be accurate and reliable. However, VicSuper has identified instances of conduct in the Relevant Period engaged in by VicSuper in which this community standard or expectation was not met.
- 2.27 The nature of the relevant conduct was disclosure or representations by VicSuper of information to members of the Fund which were incorrect or inaccurate.
- 2.28 As to the extent of the conduct, the Incident Records show that there were 65 cases in the Relevant Period, included the following:
  - (a) In July 2013 VicSuper issued a flyer in relation to its "Super Women Money Program" which stated that the advice provided through VicSuper was free. This was subsequently found to be technically inaccurate as members fund VicSuper's advice service through the administration fee, and there were certain limited circumstances when an advice fee may be payable. Although VicSuper corrected the information in the flyer there was a period of time in which members receiving the flyer may have been misled about the fees associated with VicSuper's advice service.
  - (b) There were a number of cases in the Relevant Period of member benefit statements being issued to members with errors. The errors varied and included incorrect benefit amounts, incorrect insurance amount and incorrect investment choice. In each case, upon discovery, VicSuper took steps to correct the information in the statements, however in the intervening period members were likely to have been misled.

- (c) There were a number of cases in the Relevant Period of members receiving letters or other communications (other than member benefit statements) from VicSuper which contained inaccurate or incorrect information relating to the member's membership or benefits in the Fund. Upon discovery, VicSuper took steps to correct the information, however in the intervening period the member was likely to have been misled.

2.29 If the Commissioner would be assisted by further details and information about the cases in which there was disclosure of incorrect or inaccurate information, VicSuper would be pleased to provide this to the Commissioner upon request.

#### Administration delays and errors

2.30 VicSuper considers that community standards and expectations in relation to the operation and management of a superannuation fund include the standard or expectation that a superannuation fund will be administered so that:

- (a) contributions, benefits and member requests are processed promptly; and
- (b) fund records are up-to-date, accurate and reliable.

2.31 However, VicSuper has identified instances of conduct in the Relevant Period engaged in by VicSuper in which this community standard or expectation was not met.

2.32 The nature of the conduct was:

- (a) unreasonable delay in the processing of contributions, benefits (other than roll overs and transfers which are dealt with in paragraphs 2.8 to 2.13 above) and member requests in the Relevant Period;<sup>6</sup> and
- (b) errors in the processing of contributions, benefits and member request in the Relevant Period.

2.33 With respect to the extent of the conduct, the Incident Records show that there were 297 instances of administration delays and errors across the 10 years of the Relevant Period.

2.34 The effect of the conduct varied from case to case, depending on the nature of the administration delay or error (including whether the cause was human error, a failure or gap in procedure or process or a computer software error or malfunction).

2.35 If the Commissioner would be assisted with examples, or indeed the full details, of administration delays and errors identified as occurring in the Relevant Period, VicSuper would be happy to provide further information on these matters to the Commissioner if requested.

---

<sup>6</sup> "Member requests" refers to requests from members of the Fund to change or update some aspect of their Fund membership. For example, address or other member record changes, investment switches and changes of beneficiary.

### QUESTION 3

*If yes to either or both of questions one and two:*

- (a) *Is the identified conduct, practice, behaviour or activity the subject of another inquiry or investigation, or a criminal or civil proceeding?*
- (b) *Does the entity attribute any of the identified conduct, practice, behaviour or activity to the particular culture or governance practices of the entity? If so, describe that culture or governance practice.*
- (c) *Does the entity attribute any of the identified conduct, practice, behaviour or activity to some broader cultural or governance practices in the industry or sector of the industry in which the entity operates? If so, describe those cultural or governance practices.*
- (d) *Does the entity consider that the identified conduct, practice, behaviour or activity results from other practices (including risk management, recruitment or remuneration practices)? If so, describe those practices.*
- (e) *What steps has the entity taken to:*
  - (i) *remedy the consequences for consumers or other businesses of the identified conduct, practice, behaviour or activity;*
  - (ii) *prevent recurrence of conduct, practice, behaviour or activity of the kind identified?*

### 3. Response to question 3

---

#### Other inquiries, investigations or proceedings

- 3.1 Question 3(a) of the Submission Invitation asks whether any of the identified conduct in response to questions 1 and 2 of the Submission Invitation is the subject of another inquiry or investigation, or a criminal or civil proceeding. VicSuper confirms that none of the conduct described in the answers to questions 1 and 2 above is currently the subject of any other inquiry or investigation, or criminal or civil proceeding.

#### Reasons for and causes of identified misconduct

- 3.2 Questions 3(b) to 3(d) of the Submission Invitation are essentially concerned with the reasons for, and the causes of, the conduct identified in the responses to questions 1 and 2 of the Submission Invitation. The questions seek to determine whether VicSuper:
- (a) attributes any of the identified conduct to a particular culture or governance practice;
  - (b) attributes the identified conduct to some broader cultural or governance practices in the superannuation industry; and
  - (c) considers that the identified conduct results from other practices (including risk management, recruitment or remuneration practices).
- 3.3 In each case the answer is "no". That is, with respect to the conduct identified and described in this submission, VicSuper:

- (a) does not attribute any of the identified conduct to a particular culture or governance practice;
  - (b) does not attribute any of the identified conduct to any broader cultural or governance practices in the broader superannuation industry itself; and
  - (c) does not consider that any of the identified conduct results from other practices (including risk management, recruitment or remuneration practices).
- 3.4 With the exception of the conduct noted in answer to question 1 of the Submission Invitation, in each case VicSuper considers that the conduct was inadvertent and the imperfect execution of the task resulted from the complexity and volume of transactions which rely on human and/or technological inputs whereby at times errors occur. VicSuper is satisfied with the overall quality and standard of its compliance culture, governance processes and other practices and has no cause for concern about any of these aspects of its business. VicSuper would be happy to provide further information on these matters to the Commissioner if requested.

### **Remedial action taken in response to identified conduct**

- 3.5 Question 3(e) requests information about the steps VicSuper has taken to remedy the consequences of, and prevent recurrent of, the relevant identified conduct. This information is set out with respect to each form of identified conduct below.

#### Financial adviser changing date of Statement of Advice

- 3.6 In respect of the conduct described in paragraphs 1.12 to 1.15 above (Financial adviser changing date of Statement of Advice), VicSuper took the following steps:
- (a) there were no specific steps required to remedy the consequences because at the time the conduct was discovered each relevant member had received a Statement of Advice; and
  - (b) to prevent recurrence:
    - (i) the financial adviser involved was subject to an internal disciplinary process;
    - (ii) all financial advisers working at the VicSuper financial planning centre in Traralgon (where the conduct occurred) were provided with training about the importance of following VicSuper procedures relating to Statements of Advice; and
    - (iii) all the VicSuper financial advisers were subsequently provided with training and reminders about the importance of following VicSuper procedures relating to Statements of Advice, maintaining the integrity of records generally and the applicable legislative requirements at the "Professional Development Day" for VicSuper financial advisers.

Financial adviser signing member form as witness without witnessing signature

- 3.7 In respect of the conduct described in paragraphs 1.16 to 1.17 above (Financial adviser signing member form as witness without witnessing member's signature), VicSuper took the following steps:
- (a) to remedy the consequences VicSuper arranged for the form which had been incorrectly witnessed to be signed again by the relevant member and validly witnessed; and
  - (b) to prevent recurrence:
    - (i) the financial adviser involved was subject to an internal disciplinary process;
    - (ii) all financial advisers working at the VicSuper financial planning centre in Geelong (where the conduct occurred) were provided with training about the importance of validly witnessing signatures;
    - (iii) all VicSuper financial advisers were subsequently provided with training and reminders about the importance of validly witnessing signatures at the "Professional Development Day" for VicSuper financial advisers; and
    - (iv) VicSuper also provides relevant training and reminders at Professional Development Days for VicSuper financial advisers and/or through its regular "Compliance Update" emails.

Financial adviser falsely recorded Statements of Advice as having been provided

- 3.8 In respect of the conduct described in paragraphs 1.18 to 1.19 above (Financial adviser falsely recording Statements of Advice as having been provided), VicSuper took the following steps:
- (a) to remedy the consequences VicSuper conducted an audit of all instances of financial advice provided by the adviser and took steps to ensure that each member provided with advice received a Statement of Advice; and
  - (b) to prevent recurrence:
    - (i) the financial adviser involved was immediately suspended from providing personal financial advice to members of the Fund upon the issue being discovered (and the financial adviser subsequently left the employ of VicSuper); and
    - (ii) the processes used to audit and check whether Statements of Advice were sent to Fund members after receiving personal financial advice were improved and strengthened throughout the VicSuper financial advice centres.



### Identified below-standard conduct

3.9 In respect of the "below-standard conduct" described in the responses to question 2 above, the steps taken to remedy the consequences and prevent recurrence varied from case to case. The Incident Records demonstrate cases in which, among other things:

- (a) Compensation was paid to Fund members who suffered financial loss as a result of certain below-standard conduct.

For example the Incident Records show that members who were provided with personal financial advice to make voluntary contributions to the Fund which resulted in an increased tax liability were provided with compensation and the relevant advisers were subject to education and training programs at an individual and "adviser group" level.

- (b) Staff training and/or internal reviews were conducted to identify underlying problems or systemic issues with VicSuper's systems, resources and procedures (as appropriate), and where causative problems or issues were identified, steps were taken to address the problem or issue (as appropriate) to prevent recurrence.

For example, the Incident Records show that a Fund member partially completed forms to transfer benefits into the Fund in anticipation of making a final decision as to whether or not to effect the transfer. Despite the forms being partially completed, the forms were processed by VicSuper as a finalised request, and the member's benefits were transferred into the Fund. The relevant Incident Record states that upon discovery of the incident the transfer was reversed and "[t]raining was provided... [and]... VicSuper has sought to address the identified gaps in processes."

**QUESTION 4**

*For an entity that is, or has a connection (other than an incidental connection) to, an RSE licensee of a registrable superannuation entity (as defined in the Superannuation Industry (Supervision) Act 1993 (Cth)):*

- (a) During each of the past ten years (according to whatever annual reporting periods the entity has employed in the ordinary course of its operations) to what uses and in what amounts has the entity applied members' funds other than the investment of those funds, the administration of the superannuation fund and the payment of member benefits?*
- (b) In respect of each kind of those other applications of members' funds, why was that application in the best interests of members?*
- (c) What are the cost centres that make up costs attributed to administration in each of those years?*

**4. Response to question 4**

---

- 4.1 The information requested in question 4 of the Submission Invitation is contained in Attachment 1 of this submission.

## Attachment 1

## 4(a) Categories of fund expenditure

VicSuper has applied the assets of the Fund, other than in relation to the investment of the funds, the administration of the Fund and the payment of member benefits, as follows (**Relevant Fund Expenditure**). Each category is explained further below.

Category of Relevant Fund Expenditure	(\$'000)									
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Advice expenses	6,593	6,822	7,163	6,710	7,384	7,611	7,944	8,569	9,695	8,975
Marketing/Advertising/New business	2,819	3,633	3,807	3,290	3,210	3,696	3,796	4,207	5,163	5,814
Sponsorship & Alliances	122	256	237	159	185	120	91	87	197	256
Donations	-	-	-	-	-	-	-	-	-	-
<b>TOTAL<sup>a</sup></b>	<b>9,534</b>	<b>10,711</b>	<b>11,207</b>	<b>10,159</b>	<b>10,779</b>	<b>11,427</b>	<b>11,831</b>	<b>12,863</b>	<b>15,055</b>	<b>15,045</b>
<b>FUND ADMINISTRATION EXPENSES<sup>b</sup></b>	<b>19,401</b>	<b>21,190</b>	<b>23,955</b>	<b>24,829</b>	<b>28,150</b>	<b>31,217</b>	<b>33,212</b>	<b>36,272</b>	<b>38,372</b>	<b>42,412</b>
<b>TOTAL FUND OPERATING EXPENSES<sup>c</sup></b>	<b>28,935</b>	<b>31,902</b>	<b>35,162</b>	<b>34,988</b>	<b>38,929</b>	<b>42,644</b>	<b>45,043</b>	<b>49,135</b>	<b>53,428</b>	<b>57,457</b>

a - excludes the cost of investment activities, the administration of the superannuation fund and payment of member benefits.

b - is the cost of the administration of the superannuation fund including costs in relation to payment of member benefits.

c - equals a plus b, but excludes the cost of investment activities.

## Explanation of categories of Relevant Fund Expenditure

### *Advice expenses*

Advice expenses are incurred in relation to the Advice Division of the business, which provides high quality superannuation advice to members of the Fund at no additional charge in most instances. In addition, the Advice Division delivers a broad range of education initiatives and coaches members to help them make better financial choices so they get the best long-term outcomes from their superannuation savings.

VicSuper has a unique, strong and active regional presence in Victoria. VicSuper is one of the only superannuation funds to have a dedicated team living and working in the communities in regional Victoria. In addition to our metropolitan operations, VicSuper have three regional Advice Centres and a number of serviced offices spread across Victoria.

Advice expenses include the expenses associated with:

- salaries and "on-costs";
- other staff costs (staff travel, staff professional memberships, professional development, information services);
- member and employer communications (including education initiatives and compliance related costs);
- occupancy and premises related allocated costs, including office administration; and
- IT specific related costs.

### *Marketing / Advertising / New business expenses*

VicSuper is the default fund for the Victorian public sector but outside of this market segment (eg the private sector) VicSuper has only a small number of default arrangements. As such, VicSuper spends funds on actively marketing and advertising to the private sector to attract and retain members in the Fund. Campaign activities are subject to "return on investment" assessments, so that marketing is spent in the most effective manner possible.

Expenses within this Division include salaries and on-costs, other staff costs, member / employer marketing, occupancy related allocated costs and IT specific related costs.

Strategic marketing focus and initiatives to build brand and member experience have included the following campaigns and initiatives:

- Helping Our Members Build their Super;
- Focusing on Personalisation;
- Personalising Member Benefit Statements;
- Helping Members Take Action;
- Financial Wellbeing & Inclusion;
- Working on Gender Equity; and
- Giving Members a Voice.

#### *Sponsorship & Alliances expenses*

VicSuper's philosophy for sponsorships, and partnering and aligning with organisations (i.e. Melbourne City Mission / Sleep at the G) is to primarily demonstrate its commitment to corporate responsibility and VicSuper's mission to connect with fellow Victorians and the Victorian community. Other sponsorships/initiatives have included the following:

- Community Connect Program in regional Victoria that aimed to help build the financial skills and knowledge of those in regional communities through a number of different initiatives; and
- various education initiatives at a Victorian community level.

VicSuper infrequently sponsors activities with the primary objectives of brand and media exposure, and gaining access to key decision makers in various employers and employer associations. The aim is to build relationships and receive support to ultimately increase the number of employers who select VicSuper as their default fund. Other associations include those with employer associations such as the Victorian Principals Association, the Association of Business Managers in Victorian State Schools, and the Victorian Association of State Secondary Principals.

#### **4(b) Best interests considerations**

In respect of the application of the assets of the Fund as categorised above, VicSuper considers that (in addition to the explanation above of the categories of Relevant Fund Expenditure), the application was in members' best interests for the following reasons:

- (a) In relation to the expenses associated with the Advice Division, VicSuper considers that members are well served by having access to financial advice in order to fully understand their superannuation benefits and options within the Fund. Superannuation is complex, and members often need information which is given in a personal context. VicSuper considers that making good quality and inexpensive financial advice services tailored to the Fund's products and options assists in delivering high quality outcomes for members. It places

members in a position where they can access services so as to achieve optimal retirement benefits. Approximately 80% of the costs in this category comprise staff salaries and on-costs.

- (b) In relation to the expenses associated with the Marketing Division/Advertising/New business and Sponsorship & Alliances, VicSuper considers that these expenses are part of ensuring that the Fund has sufficient scale to be efficient and to maintain future sustainability. Scale is a matter for trustee assessment which is enshrined in legislation and overall these matters of scale, efficiency and future sustainability are within APRA's current regulatory focus. VicSuper is a public offer fund, so it is important not only to retain current members but to attract new members and participating employers. Particularly when individuals change jobs from time to time, they have an opportunity to consider what fund they want to remain or become a member of, and it is important that VicSuper remains sufficiently prominent to be able to retain and attract those members.

#### 4(c) Cost centres

The cost centres that make up costs attributed to administration in each of the past ten years are set out in the following table.

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	Activities carried out by the following teams
Member Services	√	√	√	√	√	√	√	√	√	√	Includes Call Centre, Member Correspondence & walk-in interviews
Member Benefits	√	√	√	√	√	√	√	√	√	√	Payment of benefits & processing switches
Employer Services	√	√	√	√	√	√	√	√	√	√	Processing contributions made by employers, members, other super funds & ATO
Insurance & Claims	√	√	√	√	√	√	√	√	√	√	Processing insurance requests & claims
Information Services	√	√	√	√	√	√	√	√	√	√	Providing & supporting all IT needs of the company
Finance	√	√	√	√	√	√	√	√	√	√	Management, statutory and regulatory (inc tax) reporting, payroll processing & accounts payable and receivable functions
Human Resources	√	√	√	√	√	√	√	√	√	√	HR related services for the whole company including training & recruitment
Corporate Services	√	√	√	√	√	√	√	√	√	√	Compliance, risk & legal services including regulatory payments & audit services
Products & Projects	√	√	√	√	√	√	√	√	√	√	Management of projects & products for the company
CEO's Office	√	√	√	√	√	√	√	√	√	√	In relation to strategy & direction of the company
Trustee expenses	√	√	√	√	√	√	√	√	√	√	Trustee related services including trustee liability insurance payments and trustee remuneration
Marketing (in relation to Regulatory requirements)	√	√	√	√	√	√	√	√	√	√	Proportion of the marketing teams' cost spent on regulatory/compliance updates
Change Management						√	√	√	√	√	Implementation of new processes & projects
Channel Management										√	Infrastructure & process management of different member channels