

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

**Response of Industry Super Holdings Pty Ltd**

## PART 1: INTRODUCTION

- 1 This document is structured as follows:
  - (a) **Part 1** sets out the background of ISH and preliminary matters relevant to the approach taken in Parts 2 to 6.
  - (b) **Part 2** responds to the Commission's letter on behalf of ISH.
  - (c) **Part 3** responds to the Commission's letter on behalf of ISA.
  - (d) **Part 4** responds to the Commission's letter on behalf of IFMH.
  - (e) **Part 5** responds to the Commission's letter on behalf of IFS.
  - (f) **Part 6** responds to the Commission's letter on behalf of The New Daily.
  
- 2 The following documents are enclosed:
  - (a) **Annexure 1:** ISH corporate structure and shareholding.
  - (b) **Annexure 2:** ISH annual financial report for the 2017 financial year.
  - (c) **Confidential Annexure 3:** ISA annual financial report for the 2017 financial year.
  - (d) **Annexure 4:** IFM response to question 1 and 3 in respect of misconduct.
  - (e) **Annexure 5:** IFM response to question 2 and 3 in respect of conduct falling below community standards and expectations.
  - (f) **Annexure 6:** IFMH annual financial report for the 2017 financial year.
  - (g) **Annexure 7:** IFS response to questions 1 and 3 in respect of misconduct.
  - (h) **Annexure 8:** IFS response to questions 2 and 3 in respect of conduct falling below community standards and expectations.
  - (i) **Annexure 9:** IFS annual financial report for the 2017 financial year.
  - (j) **Confidential Annexure 10:** Response to question 4 on behalf of AUSfund.
  - (k) **Confidential Annexure 11:** Response to question 4 on behalf of IRIS.
  - (l) **Confidential Annexure 12:** The New Daily annual financial report for the 2017 financial year.

### Definitions

- 3 This submission adopts the definitions set out in the Terms of Reference. This submission also uses the following further definitions:
  - (a) **ACSI** means Australian Council of Superannuation Investors Limited.
  - (b) **AIST** means Australian Institute of Superannuation Trustees.
  - (c) **APRA** means the Australian Prudential Regulation Authority.
  - (d) **ASFA** means Association of Superannuation Funds of Australia Limited.

- (e) **ASIC** means the Australian Securities and Investments Commission.
- (f) **Commission's letter** means the letter from the Royal Commission to Industry Super Holdings Pty Ltd dated 8 January 2017.
- (g) **ERF** means Eligible Rollover Fund.
- (h) **FEAL** means Fund Executives Association Limited.
- (i) **FUM** means funds under management.
- (j) **IFCC** means Industry Funds Credit Control Pty Ltd.
- (k) **IFFS** means Industry Fund Financial Services Pty Ltd.
- (l) **IFI** means Industry Fund Investments Ltd (as Trustee of AUSfund).
- (m) **IFF** means Industry Funds Forum.
- (n) **IFMN2** means Industry Funds Management (Nominees 2) Pty Ltd (as Trustee of Super Loans Trust).
- (o) **IFM Group** means IFM Holdings Pty Ltd (**IFMH**), IFM Investors (Nominees) Limited (**IFMN**), IFM Fiduciary Pty Ltd (**IFMF**), IFM Fiduciary No.2 Pty Ltd (**IFMF2**), IFM Investors Pty Ltd (**IFM**) and their subsidiaries.
- (p) **IFS** means Industry Funds Services Ltd.
- (q) **IFSIS** means IFS Insurance Solutions Pty Ltd.
- (r) **Industry SuperFunds** means the 16 participating organisations in ISA.
- (s) **ISA** means Industry Super Australia Pty Ltd.
- (t) **ISH** means Industry Super Holdings Pty Ltd.
- (u) **ME Bank** means Members Equity Bank Limited.
- (v) **PST** means Pooled Superannuation Trusts.
- (w) **Relevant Period** means 1 January 2008 to date.
- (x) **SMI** means Super Members Investments Limited (as Trustee of IRIS Superannuation Fund).
- (y) **RSE License** means Registrable Superannuation Entity License as defined under the *Superannuation Industry (Supervision) Act 1993 (Cth)*.
- (z) **SIS Act** means *Superannuation Industry (Supervision) Act 1993 (Cth)*.
- (aa) **SIS Regulations** means *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.
- (bb) **New Daily** means The New Daily Pty Ltd.
- (cc) **WIS** means Women in Super.

## A. Structure

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- 4 ISH was incorporated on 17 May 2006 under the name IFBT Company Pty Ltd. IFBT Company Pty Ltd changed its name to Industry Super Holdings Pty Ltd on 19 July 2007.
- 5 ISH is a non-operating holding company that wholly owns the following four entities:
- (a) ISA;
  - (b) IFMH;
  - (c) IFS; and
  - (d) New Daily.
- 6 The shares in ISH are held by the trustees of 27 not-for-profit industry superannuation funds. A diagram showing the corporate structure of ISH is **Annexure 1**.
- 7 The structure and activities of each of the four entities is described in more detail in Parts 2 to 6 of this document. Part 2 of this submission addresses the Commission's questions for ISH and Parts 3 - 6 address the Commission's questions for each of ISA, IFMH, IFS and New Daily.

## B. Preliminary matters

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### Changes to the corporate structure of ISH

- 8 The ISH group of companies has been restructured from time to time during the Relevant Period. As a result of these restructures, certain businesses or entities within the ISH corporate group have ceased business, been deregistered or wound up, restructured or divested.
- 9 This document only responds to the Commission's letter on behalf of those entities that are currently within the ISH group of companies.

### Identifying misconduct and conduct falling below community standards and expectations

- 10 For the purpose of responding to question 1 of the Commission's letter, the ISH group has adopted the definition of misconduct provided in the Terms of Reference.

### Administrative errors and human resources (HR) incidents

- 11 Administrative errors and internal HR incidents occur in the ordinary course of carrying on business. From time to time during the Relevant Period, entities within the ISH group of companies have made administrative errors such as correspondence being sent to the wrong address, incorrect calculations of administration fees or delays on account of system errors. HR incidents, such as allegations of workplace harassment or allegations of inappropriate workplace behaviour, have also occurred from time to time during the Relevant Period.
- 12 ISH group entities have in place policies and procedures for managing administrative errors and HR incidents. Having regard to the Commission's Terms of Reference and the isolated circumstances in which they occur, the ISH group does not consider that those matters constitute misconduct or conduct falling below community standards or expectations by the ISH group.

### Application of members' funds

- 13 Three trustee entities within the ISH group of companies (SMI, IFI and IFMN) are RSE Licensees of a registrable superannuation entity or entities within the meaning of the SIS Act. SMI, IFI and IFMN are the only entities that apply members' funds. Question 4 of the Commission's letter applies to these three entities.
- 14 Notwithstanding that question 4 of the Commission's letter does not apply to other entities in the ISH group of companies (which do not apply members' funds), in the interest of assisting the Commission, the following entities annex their annual financial report for the 2017 financial year.
- (a) ISH;
  - (b) IFMH;
  - (c) IFS;
  - (d) ISA; and
  - (e) The New Daily.
- 15 ISH and its associated entities can provide any further financial information the Commission may require.

## PART 2: INDUSTRY SUPER HOLDINGS PTY LTD

### A. Organisation and ownership

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- 16 The corporate structure of ISH is set out in Part 1 of this submission.<sup>1</sup>
- 17 As shown in Annexure 1, the shareholders of ISH are the trustees of 27 not-for-profit industry superannuation funds.

### B. Governance

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- 18 The constitution of ISH provides that a person will only be eligible for appointment as director of ISH if they are a director of, and have been nominated for appointment by, IFMH or IFS.

### C. Principal business activities

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- 19 As a non-operating holding company, ISH does not carry on any business activities.
- 20 ISH does not generate income.
- 21 ISH receives dividends paid from one of its profit making subsidiaries, IFM. ISH uses those funds to re-invest in or otherwise fund its subsidiaries, and for sponsorship and membership activities.

### D. Answers to Questions 1 - 3

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- 22 ISH has not identified any misconduct during the Relevant Period.
- 23 ISH has also not identified any conduct, practice, behaviour or business activity during the Relevant Period which it considers has fallen below community standards and expectations.
- 24 Question 3 is not applicable.

### E. Answers to Question 4

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- 25 Question 4 does not apply to ISH as it does not apply members' funds.
- 26 A copy of ISH's annual financial report for the 2017 financial year is **Annexure 2**.

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<sup>1</sup> See also Annexure 1.

## PART 3: INDUSTRY SUPER AUSTRALIA PTY LTD

### A. Background

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- 27 ISA is a prominent industry body for the Industry SuperFunds, with the objective of maximising the retirement savings of over 5 million super fund members.
- 28 ISA's Board of Directors comprises 13 members (including one alternate director), nine of whom are nominated by the participating organisations and three of whom may be appointed by ISA.
- 29 The principal activity of ISA is the joint marketing campaign, which builds on over 20 years of collective marketing efforts by Industry SuperFunds. The campaign promotes the Industry SuperFunds' "all profits to members" model as well as the benefits of membership in participating Industry SuperFunds. The campaign has developed the well-known Industry SuperFunds brand.
- 30 The joint marketing campaign is overseen by a governance committee, the Joint Marketing Campaign Steering Committee. This committee comprises representatives from the IndustrySuperFunds.
- 31 The committee is responsible for the development of the business plan and the strategic framework for the campaign which is built on two core elements: the proposition that the best superannuation model is that run only to benefit members and an objective to assist Industry SuperFunds to grow and remain resilient so that the funds can continue to maximise benefit to members through increased scale.
- 32 ISA also carries out research and policy development and undertakes government relations and advocacy directed to maximising benefits to fund members. These efforts have a strong track record.
- 33 By making contributions to ISA, participating funds and organisations have access to what are cost efficient and highly effective marketing and advocacy programs, which no fund could achieve on its own. This has helped Industry SuperFunds to out-perform retail super funds (delivering better retirement outcomes to fund members) and has heightened the trust the public has in Industry SuperFunds. By doing so, this enables the participating funds to both retain existing and recruit new members. The resultant economies of scale have several benefits, including lower administration costs and enabling Industry SuperFunds to invest more broadly, thereby obtaining a better return on funds invested.
- 34 Research has shown that over the long term (2004 to 2016) investments managed by Industry SuperFunds that display the Industry SuperFunds brand grew faster (measured by assets under management) than other industry super funds. Research has also shown that the level of trust in and awareness of Industry SuperFunds has increased significantly between 2013 and 2017.<sup>2</sup>

### B. Answer to Questions 1 to 3

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- 35 ISA is not aware of any misconduct by its directors, officers or employees, or any persons acting on its behalf, during the Relevant Period.
- 36 ISA has not identified any conduct, practice, behaviour or business activity which it considers falls below community standards and expectations.

<sup>2</sup> ISA, Market Share Report 2016 (based on APRA data).

- 37 While ISA has not identified any misconduct or conduct falling below community standards, ISA considers that it is appropriate to draw the following to the Commission's attention:
- (a) In 2005, ISA launched its well-known "Compare the Pair" advertising campaign. The campaign compares the performance of Industry SuperFunds with retail super funds.
  - (b) In 2012, around the time ASIC published new good practice guidance for financial product and service advertising, ASIC sought information from ISA about the advertisements which ISA understood to be part of a compliance review of high profile campaigns in the industry. ISA provided the information sought and did not receive further inquiries from ASIC.
  - (c) A new version of the "Compare the Pair" campaign was launched in early 2014.
  - (d) In June 2014, ASIC expressed concerns to ISA that the advertisements contained certain implied representations, including that the outperformance of Industry SuperFunds was likely to continue into the future. Although ISA did not agree that the advertisements contained the implied representations, ISA promptly resolved the matter with ASIC by providing additional information about the sample of funds used in the comparison, and a verbal disclaimer that past performance was not a reliable indicator of future performance (in addition to the existing written disclaimer to this effect).
  - (e) Between March 2017 and December 2017 ISA aired an advertising campaign, informing members that the banks are lobbying Parliament to secure changes that could have an adverse impact on their interests and their retirement savings. In the campaign retail superannuation funds owned by banks were portrayed as foxes circling a henhouse. Politicians were represented as a man who opens the door of the henhouse suggesting that the foxes are let in.
  - (f) On 5 April 2017 ASIC enquired about an apparent discrepancy between the Fox and Henhouse campaign website and the ISF core website (industrysuper.com) regarding the sampling method used in disclaimers related to outperformance. On 7 April 2017 ISA confirmed to ASIC that the discrepancy itself was not inconsistent with the advertising material, but was caused by human error and immediately rectified. No further action was taken by ASIC.
  - (g) Complaints about the confronting nature of the advertisement were lodged with the Advertising Standards Bureau. Following a review, the Bureau decided that the campaign did not breach community standards as set out in the AANA Code for Advertising and Marketing Ethics.
  - (h) Later, the Standing Committee on Economics of the Commonwealth Parliament inquired of APRA if it had considered whether the campaign was in the best interests of industry fund members. APRA informed the Committee that inquiries had been made of industry super and three large funds about the expenditure on the campaign. What it sought to ascertain was whether there was a "cogent argument" to conduct the campaign. APRA advised the Committee, in substance, that it was satisfied that there was a cogent argument that the campaign was in the best interest of members.

### **C. Answer to Question 3**

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- 38 Question 3 is not applicable.

**D. Answer to Question 4**

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- 39 ISA is funded through fees paid by its participating organisations, which include Industry SuperFunds. In this regard ISA does not apply “members’ funds”.
- 40 However to assist the Commission, ISA has provided a brief description of its expenditure for the last financial year, as well as a copy of ISA’s annual financial report for the 2017 financial year. In summary, the expenditure for the last financial year was as follows:
- (a) Approximately 77% was spent on marketing activities, in particular development and deployment of the Joint Marketing Campaign. Of this amount less than 1% relates to sponsorship arrangements, the purpose of which is to promote the benefits of Industry SuperFund membership to members and other target audiences;
  - (b) Approximately 22% was spent on public policy development, government relations and advocacy. The purpose is to influence policy development for the benefit of industry super fund members. For example, in recent years ISA has successfully advocated for the abolition of conflicted remuneration for financial advisers; the introduction of a new requirement that financial advice be in the best interest of the client; the creation of default fund safety net to protect the interests of the estimated 80% of workers that rely on the employer default fund; and the increase of the superannuation guarantee. It has also raised public awareness of the problem of underpayment by employers of superannuation entitlement; and
  - (c) Approximately 1% was spent on directors’ fees and board administration costs.
- 41 **Confidential Annexure 3** contains a copy of ISA’s financial report for the 2017 financial year.

## PART 4: IFM HOLDINGS PTY LTD

### A. Organisation and ownership

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- 42 IFMH is a wholly owned subsidiary of ISH. The IFM Group is the wholly owned investment management business of ISH.
- 43 The IFM Group invests on behalf of institutional investors globally, including superannuation and pension funds, sovereign wealth funds, insurers, endowments, foundations and universities. The IFM Group does not have any retail clients or clients who are natural persons.
- 44 As of 31 December 2017, the IFM Group employed over 340 staff and manages funds on behalf of 284 institutional investors globally. 63 of these investors are located in Australia and 221 of these investors are located around the world in North America, the Middle East, the UK & Europe and Asia. The IFM Group manages approximately A\$101 billion worth of assets across four asset classes, namely infrastructure, debt investments, listed equities and private equity. The IFM Group is headquartered in Melbourne and has offices in Sydney, London, New York, Berlin, Tokyo, Hong Kong and Seoul.

### B. Governance

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- 45 The constitution of IFMH requires it to have a minimum of 5 directors and maximum of 8 directors. IFMH is currently governed by a board of 8 directors, who are independent of the clients of IFM and the shareholders of ISH. All IFMH directors also serve as directors of IFM, IFMN, IFMF and IFMF2. These Boards meet concurrently.
- 46 Board members are nominated by a Director Nominations Committee (comprising representatives of IFM and the ISH shareholders) and are approved by ISH's shareholders.

### C. Principal business activities

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- 47 IFM is the main operating entity within the IFM Group and acts as an investment manager to IFM Group managed investment schemes. IFM also provides investment management and advisory services to funds and mandates established as part of the IFM Group's infrastructure, debt investments, listed equities and private equity business lines.
- 48 The IFM Group manages investment schemes which include four APRA-regulated PSTs. IFMN holds an RSE License and acts as trustee of those four APRA regulated PSTs. Of the \$101 billion that the IFM Group has in FUM, less than 10% (\$8.7 billion) are held by IFMN as trustee for four APRA-regulated PSTs.
- 49 Income of the IFM Group is generated by IFM from management fees for investment management and advisory services provided to funds and mandates.
- 50 Performance fees may also be payable where investment returns exceed a pre-determined return threshold.
- 51 Management and performance fees are paid from investors to IFM under the direction of the trustee of the fund or mandate.

#### D. Answers to Questions 1 to 3

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- 52 All of the operational activities of the IFM Group are performed by IFM. IFM has identified 8 instances of misconduct during the Relevant Period. A table answering questions 1 and 3 in respect of this misconduct is **Annexure 4**.
- 53 IFM has also identified 1 instance of conduct, practice, behaviour or business activity during the Relevant Period which it considers have fallen below community standards and expectations. A table answering questions 2 and 3 in respect of this conduct, practice, behaviour or business activity is **Annexure 5**.

#### E. Answer to Question 4

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- 54 IFMN is the only entity within the IFM Group that holds an RSE License and is the only entity that applies members' funds. IFMN is the trustee for four APRA-regulated PSTs:
- (a) IFM Infrastructure Funds;
  - (b) IFM International Private Equity Funds;
  - (c) IFM International Private Equity Fund I; and
  - (d) IFM International Private Equity Fund III.
- 55 The SIS Act and SIS Regulations provide that a PST can only accept investments from certain legal entities (primarily regulated superannuation funds, approved deposit funds, and other PSTs) but not natural persons. A PST is used for pooling and investing the assets of institutional investors. RSE Licensees are not subject to the "sole purpose test" under s 62 of the SIS Act in relation to PSTs.

**Question 4(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?**

#### *IFMN*

- 56 As trustee of four PSTs, IFMN applies all funds received from institutional investors for the administration of the PSTs, including the investment of those funds.
- 57 In relation to the PSTs, IFMN engages IFM to provide administrative services, including investment and asset management services, and directs IFM to collect fees for these investment and asset management services from the PSTs.

#### *IFM Group*

- 58 Question 4 is not applicable to entities in the IFM Group, other than IFMN, on the basis that those entities do not apply members' funds.
- 59 A copy of IFMH's annual financial report for the 2017 financial year is **Annexure 6**.

**Question 4(b):**

**In respect of each kind of those other applications of members' funds, why was that application in the best interests of members?**

- 60 As set out above, IFMN applies all funds received from institutional investors for the administration of the PSTs, including the investment of those funds.

**Question 4(c):**

**What are the cost centres that make up costs attributed to administration in each of those years?**

*IFMN*

- 61 The costs of IFMN as trustee of the PSTs that may be attributed to the administration of the four PSTs are as follows:
- (a) Investment management and advisory fees;
  - (b) Legal fees;
  - (c) Auditors' remuneration fees;
  - (d) Tax and consulting fees;
  - (e) Valuation fees; and
  - (f) Other expenses.
- 62 IFMN, in its capacity as trustee of the PSTs, directs IFM to collect fees for investment and asset management services from the PSTs.
- 63 In addition, the SIS Act requires that PSTs hold assets in custodian bank accounts. The PSTs of which IFMN is a trustee are registered for GST, are required to lodge quarterly Business Activity Statements and usually receive a refund from the ATO.
- 64 Given that the ATO does not pay Business Activity Statements / GST refunds into custodian bank accounts, the ATO pays the refunds directly into the IFMN corporate bank account. IFMN then transfers those refunds to the custodian bank accounts of the PSTs as part of the administration of those four PSTs.

*IFM Group*

- 65 As indicated above, question 4 is not applicable to entities in the IFM Group, other than IFMN, as those entities do not apply members' funds.
- 66 However, in order to assist the Commission, set out below are the IFM cost centres, including those attributed to the administration of the four PSTs of which IFMN is trustee. IFM does not separately report costs attributable to the four PSTs of which IFMN is trustee. The costs of administration of the four PSTs is a proportion of IFM's administration costs. The cost centres attributed to administration of IFM are:
- (a) Salaries, consultants and recruitment costs;
  - (b) IT and data services;
  - (c) Investment management and custody fees;

- (d) Legal, regulatory, audit, tax and insurance;
- (e) Staff training, conferences and journals;
- (f) Rent and other office costs;
- (g) Marketing;
- (h) Travel and travel costs;
- (i) Depreciation expenses;
- (j) Strategic Initiatives;
- (k) Other expenses; and
- (l) Offshore office charges.

## PART 5: INDUSTRY FUND SERVICES LIMITED

### A. Organisation and ownership

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- 67 IFS is a wholly owned subsidiary of ISH.
- 68 IFS holds the following subsidiaries:
- (a) SMI (as Trustee of IRIS Superannuation Fund);
  - (b) IFI (as Trustee of AUSfund);
  - (c) IFSIS;
  - (d) IFMN2 (as Trustee of Super Loans Trust); and
  - (e) IFFS.

### B. Governance

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- 69 The constitution of IFS requires it to have a minimum of 3 and maximum of 8 directors. IFS is currently governed by a Board of six directors appointed by the shareholders of ISH. All IFS directors also serve as directors of IFI and SMI, and these Boards meet concurrently.
- 70 Board members are nominated by a Director Nominations Committee (comprising representatives of IFS and shareholders of ISH) and are approved by ISH's shareholders.
- 71 ISA is a Corporate Authorised Representative of IFS.

### C. Principal business activities

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- 72 IFS carries on the following business activities.

#### Advice Solutions: financial planning

- 73 IFS has an advice solutions business unit known as Advice Solutions that provides financial planning services to superannuation funds. This business unit currently has 12 clients drawn from industry and public sector superannuation funds. Some of those clients are shareholders in ISH.
- 74 IFS holds an AFSL that authorises IFS to offer Financial Product Advice<sup>3</sup> and Dealing<sup>4</sup> services to Retail Clients<sup>5</sup> and Wholesale Clients<sup>6</sup> through authorised financial planners<sup>7</sup>. IFS is accordingly subject to regulation and oversight by ASIC.
- 75 Advice Solutions offers financial planning services by seconding employees to IFS clients, or facilitating the employment of IFS Authorised Representatives by IFS clients.

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<sup>3</sup> Defined in s 766B of the Corporations Act 2001.

<sup>4</sup> Defined in s 766C of the Corporations Act 2001.

<sup>5</sup> Defined in ss 761A, 761G and 761GA of the Corporations Act 2001.

<sup>6</sup> Defined in ss 761A and 761G of the Corporations Act 2001.

<sup>7</sup> Representatives and Authorised Representatives defined in s 761A of the Corporations Act.

- 76 IFS' Advice Solution business unit is predominantly derived from dealership services such as:
- (a) Planner training and professional development;
  - (b) Technology and technical support;
  - (c) Research services;
  - (d) Compliance monitoring; and
  - (e) Planner support services, including para-planning and implementation of advice.

#### **Unpaid Super: collection of unpaid superannuation**

- 77 IFS has a telephone based debt collection service which is dedicated to recovering unpaid superannuation guarantee contributions. Collection services are performed under a services contract between IFS and fund trustees. Where initial telephone contact is unsuccessful, a fund trustee may authorise the commencement of legal proceedings.
- 78 Until 2012, the collection of unpaid superannuation was undertaken by IFCC. In 2012, IFCC was liquidated and its functions transferred to IFS.

#### **Trustee services**

- 79 IFS carries on a business that provides trustee services (investment governance, finance, legal, risk and compliance, board support and other administrative services) to both superannuation trustees, IFI and SMI. These services are provided under Trustee Office Management Service Agreements (**TOMSAs**).
- 80 IFI and SMI charge their members a fee for the administration of the funds. Those administration fees cover the cost of operating their respective funds and include payment of fees to IFS for trustee services.
- 81 IFS also provides various shared services to ISA, New Daily, IFSIS, and Industry Funds Forum, such as corporate, accounting, HR and information and communications technology services.

#### **ifinvest: investment management**

- 82 IFS performs certain non-superannuation investment management functions.
- 83 IFS launched the ifinvest product in 2017. ifinvest is a white label investor-directed portfolio service scheme that offers blended non-superannuation investment models and single manager options. It has FUM of approximately \$215 million at December 2017.
- 84 OneVue is the responsible manager of the product. IFS selects the managers and designs the model portfolios, and promotes the product under the IFS brand. IFS receives a fee from OneVue for its services. Investors include industry fund members and entities associated with industry funds, such as trade unions.
- 85 IFS was also the Responsible Entity for the managed investment scheme known as the Industry Fund Portfolio Service. Industry Fund Portfolio Service ceased trading in June 2017 and was wound up in late 2017.

#### **Business activities of subsidiaries**

- 86 IFS engages in the following activities through its subsidiaries.

Industry Fund Investments Limited (IFI)

- 87 IFI is a wholly owned subsidiary of IFS.
- 88 IFI is an RSE Licensee and the Trustee of AUSfund, an ERF. The sole purpose of AUSfund is to act as a temporary repository for amounts transferred from other regulated superannuation funds which have become lost and inactive. At 30 June 2017, AUSfund had 765,000 members and FUM of about \$530m. AUSfund is run for profit.
- 89 IFI outsources account administration (to Australian Administration Services), custodian services (to the National Australia Bank) and trustee office services (to IFS). Investment management of the fund assets is outsourced to a range of investment managers.
- 90 As noted above, IFS provides trustee office services to IFI under a TOMSA.

Super Members Investments Limited (SMI)

- 91 SMI is a wholly owned subsidiary of IFS.
- 92 SMI is an RSE Licensee and was, until 2 February 2018, the Trustee of IRIS pension fund, a complying superannuation pension fund. SMI was established to hold pension assets for pension accounts created via CBUS, HESTA and IRIS. Accordingly, it had no members directly.
- 93 On 3 February 2018, the assets and members of IRIS were transferred to HESTA under the terms of a successor fund transfer. At transfer, the fund had 3187 members and \$287 million in assets. SMI outsourced account administration (to Australian Administration Services), custodial services (to the National Australia Bank) and trustee office services (to IFS). Investment management of the fund assets was outsourced to a range of investment managers. Like AUSfund, IRIS was run for profit.
- 94 As noted above, IFS provided trustee office services to SMI under a TOMSA.

IFS Insurance Solutions Pty Limited (IFSIS)

- 95 IFSIS is a wholly-owned subsidiary of IFS.
- 96 IFSIS holds an AFSL and is an insurance broking and consulting firm providing strategic advice and services.
- 97 IFSIS restricts its staff to the provision of “general advice” only and is not involved in the delivery of personal advice to clients.

Industry Funds Management (Nominees 2) Pty Ltd (IFMN2)

- 98 IFMN2 is a wholly owned subsidiary of IFS.
- 99 IFMN2 is the trustee of three trusts involved in the funding of ME Bank’s business:
- (a) the Super Business Loans Unit Trust;
  - (b) the Super Business Loans Investing Trust; and
  - (c) the Super Loans Warehouse Trust 2001,
- collectively referred to as the **Super Loans Trusts**.

- 100 IFMN2 does not have any employees and has engaged ME Portfolio Management Ltd as the trust manager for the Super Loans Trusts, under the terms of the Consolidated Trust deed. FUM as at 30 June 2017 was \$209 million, representing a decrease of 60% over the preceding 12 months.
- 101 The trust is a closed investment which is in the process of being wound down. Completion of the sale of the remaining commercial loan book was achieved in December 2017. Due to the nature of the underlying assets, completion to the winding up of the trust will take some time.

#### **D. Answer to Questions 1 to 3**

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- 102 IFS has identified 6 cases of misconduct during the Relevant Period. A table answering questions 1 and 3 in respect of this misconduct is **Annexure 7**.
- 103 IFS has also identified 28 instances of conduct, practice, behaviour or business activity during the Relevant Period which it considers have fallen below community standards and expectations. A table answering questions 2 and 3 in respect of this conduct, practice, behaviour or business activity is **Annexure 8**.

#### **Other matters**

- 104 While IFS does not consider that the following matters constitute conduct falling short of community standards (having regard to the Commission's Terms of Reference), for completeness it notes that it has identified the following conduct occurring during the Relevant Period.

##### IFS

- inaccurate or poor quality advice was given, including circumstances which required compensation to clients;
- inaccurate fees were charged due to administrative error (instances where inaccurate fees were charged due to misconduct are separately disclosed in answer to question 1);
- staff failed to follow proper processes in the implementation of advice;
- inadvertent privacy related incidents involving information and/or documents being sent to the wrong person or office;
- failing to display IFS' company name prominently or update IFS' address in publications, update internal board charters and provide up to date information about executive officers and directors;

##### Industry Funds Portfolio Service

- administrative error resulted in term deposit forms being lodged with incorrect term deposit rates;
- incorrect fees were charged due to administrative error;
- errors in unit pricing resulting from the failure to update information on a timely basis;

##### ifsinvest

- incorrect fees were charged, or incorrect tax withheld due to administrative error;

IF/SIS

- payments to clients and underwriters were not made in a timely manner;
- delays in processing insurance policy renewals, incorrectly sending overdue notices and incorrectly deducting premiums;

IFI

- rollover forms were not processed in a timely way;
- incorrect fees were charged due to administrative error;
- there have been errors in the taxation of benefits and payments;
- tax deductions were incorrectly claimed due to payments having been made to beneficiaries in error;
- exiting members were found to have incorrect balances;
- errors in IFI's recording and reporting of members' contributions, were raised by the ATO;

SMI

- rollover forms were not processed in a timely way;
- there were errors in unit pricing resulting from calculation errors;
- the unit register has been found to be inaccurate or investment instructions were not received or acted on by the Custodian;
- privacy issues involving information accidentally being given to the wrong member and data being accessed by unauthorised persons;
- errors in direct debit processing;
- incorrect fees were charged due to administrative error; and
- there was a privacy issue arising from a cheque being sent to the wrong member.

105 Further details of any of these matters can be provided to the Commission if requested.

**E. Answer to Question 4**

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106 Only two entities in the IFS group of companies are RSE Licensees of registrable superannuation entities:

- (a) IFI as the trustee of AUSfund; and
- (b) SMI as the trustee of IRIS.

107 No other entities within the IFS group of companies apply members' funds. Question four is therefore not applicable to those entities.

108 A copy of IFS' annual financial statement for the 2017 financial year is **Annexure 9**.

**Question 4(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?**

**AUSfund**

- 109 IFI is the trustee of AUSfund.
- 110 IFS pays expenses on behalf of AUSfund. AUSfund charges \$11.50 per account plus a trustee investment fee of 25 basis points to members, and pays those fees to IFS under the TOMSA as discussed above. The payment of fees to IFS is for the performance of administrative services.
- 111 While in IFS' hands, the fees paid to it (from which it pays expenses on behalf of AUSfund) are not "members' funds". However, for the assistance of the Commission, IFS has set out the total fund expenses in relation to AUSfund at **Confidential Annexure 10**.
- 112 While all expenses paid by IFS in relation to AUSfund are considered to be administrative, for the assistance of the Commission, IFS has identified the following non-investment, discretionary administrative expenditure in relation to AUSfund in the line items "General Marketing" and "Corporate Memberships". A general description of the activities covered by these uses are set out below:
- (a) **General Marketing:** includes essential costs such as member communications and maintenance of the AUSfund website, which hosts essential consumer information, including information required to meet trustee disclosure obligations. General marketing also includes discretionary marketing activities directed to attracting rollovers from RSEs, and marketing AUSfund's services to its own members and to superannuation fund executives and trustees.
  - (b) **Corporate Memberships:** these are payments to various entities, including ACTU Member Connect, and industry bodies such as IFF, AIST, ACSI and ASFA.

**IRIS**

- 113 SMI is the trustee of IRIS.
- 114 IRIS charges percentage based fees on each investment option for administration and investment management fees. Fees range from 40 basis points to 100 basis points, and are paid to SMI monthly in arrears. IFS incurs administrative expenses on behalf SMI as trustee of IRIS pursuant to a TOMSA. SMI pays to IFS by way of reimbursement all expenses incurred in relation to the administration of IRIS.
- 115 The total fund expenses in relation to IRIS is set out at **Confidential Annexure 11**. All expenses paid by IFS on behalf of SMI are considered to be administrative.
- 116 However, for the purposes of responding to question 4(a), IFS has identified the non-investment, discretionary administrative expenditure in relation to IRIS in the line item

“Corporate Memberships”. A general description of the activities covered by this use is set out below:

- (a) **Corporate Memberships:** these are payments to various entities including ACTU Member Connect, ASCI and industry bodies such as AIST, IFF, ASFA and WIS.

**Question 4(b):**

**In respect of each kind of those other applications of members’ funds, why was that application in the best interests of members?**

**AUSfund**

- 117 IFI only applies members’ funds to the administration of AUSfund, including investment.
- 118 However, to provide insights into the operations of the fund, we provide the Commission with the following details in relation to expenditure by IFS on general marketing and corporate memberships in relation to AUSfund.

General marketing

- 119 AUSfund expends members’ monies on general marketing to maintain scale and keep costs low. AUSfund markets itself to RSE Licensees as the most effective vehicle to preserve members’ capital and protect against its erosion through multiple superannuation account keeping fees. This is the statutory role of an ERF. At 30 June 2017, over 14.8 million Australians had a super fund account. Approximately 40% of these people had more than one super account.<sup>8</sup>
- 120 The secondary purpose is to ensure AUSfund retains sufficient scale to maintain its low cost services to members.
- 121 Marketing of AUSFund to retain scale is therefore in the best interests of the existing members, and in the interests of the holders of small, lost and inactive accounts more generally. In 2008, AUSfund engaged in a consumer awareness campaign directed at assisting Australians to find their lost superannuation accounts.
- 122 As superannuation funds and the ATO have become increasingly active in promoting account consolidation, IFI/AUSfund retreated from consumer marketing, and IFI/AUSfund’s discretionary marketing budget has been expended on activities that promote AUSfund’s services to its existing members. These include campaigns to encourage members to update their details to facilitate AUSfund’s address matching service, and building online tools that assist members to rollover their superannuation account.
- 123 Monies are also expended on promoting AUSfund to superannuation fund trustees and to regulators to maintain sufficient fund scale. Expenditure has included advertisements and sponsored content in journals/directories, market research, benchmarking reports and independent modelling of the comparative benefits to members of membership of AUSfund.

Corporate Memberships

- 124 During the last ten years IFI and / or AUSfund have held numerous memberships.

<sup>8</sup> <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/super-statistics/super-accounts-data/super-accounts-data-overview/> accessed 10.2.18.

- 125 Depending on the entity's rules, memberships are held in the name of individual executives serving the fund. In other cases they are held as corporate memberships in the name of AUSfund or IFS.
- 126 IFI has held corporate memberships with industry bodies such as ASCI, AIST, IFF, ASFA, FEAL and WIS. These memberships provide IFI with industry support and assistance to manage the investment of assets and professional development for directors and IFS staff in providing services to members.
- 127 Membership of industry bodies (such as AIST, IFF and ASFA) also provide IFI with opportunities to contribute to the development of industry policy in respect of superannuation generally, and the treatment of small, lost and inactive accounts in particular.
- 128 Membership of industry bodies also provides business development opportunities. These arise through attendance and speaking at conferences, membership of committees and communities of interest, and attendance at industry events, where the trustee promotes the benefit to fund members of rolling small, lost and inactive accounts to AUSfund, compared to retention of the account in a superannuation fund or transfer to the ATO. The trustee also promotes AUSfund's services such as cross fund matching.
- 129 Sponsorship of ACTU Member Connect has provided IFI/AUSfund with the ability to contribute to the development of ACTU policy in respect of superannuation generally, and the treatment of small, lost and inactive accounts in particular. Union nominated superannuation fund trustees have demonstrated particular interest in the protection of lost and inactive accounts. Business development opportunities arise through speaking opportunities at events and conferences, regular articles in email marketing campaigns distributed to ACTU affiliates and subscribers, and targeted introduction to key officials and superannuation fund trustees. This relationship is governed by a contract for services, and performance against the contract is monitored by the IFS Board.

## **IRIS**

- 130 SMI only applies members' funds to the administration of IRIS.
- 131 However, the following details are provided in relation to the expenditure by IFS on Corporate Memberships in relation to IRIS.

### Corporate Memberships

- 132 As set out above, IRIS has held memberships of various industry bodies during the last ten years. The memberships are generally held as corporate memberships with IFS, with membership dues apportioned across the relevant entities or business units within the IFS Group.
- 133 SMI has held corporate memberships with industry bodies such as ASCI, AIST, IFF, ASFA, FEAL and WIS. These memberships provide SMI with industry support and assistance to manage the investment of assets and professional development for directors and IFS staff in providing services to members.
- 134 Membership of industry bodies (such as AIST, IFF and ASFA) also provide SMI with opportunities to contribute to the development of industry policy in respect of superannuation generally, and retirement income products specifically.
- 135 Sponsorship of ACTU Member Connect provides SMI with a distribution channel for attracting new members to the fund. This channel was critical to maintaining scale within the fund. It also provided SMI with the ability to contribute to the development of ACTU policy in respect of superannuation generally, and retirement income products

specifically. This relationship is governed by a contract for services, and performance against the contract is monitored by the IFS Board.

**Question 4(c):**

**What are the cost centres that make up costs attributed to administration in each of those years?**

**AUSfund**

- 136 Prior to 1 July 2015, AUSfund paid administrative expenses directly, including trustee services fees to IFS.
- 137 Since 1 July 2015, IFS pays all administration expenses in relation to the operation of AUSfund, this includes incurring its share of corporate (shared service) costs in relation to the Board and CEO, finance and operations, human resources and payroll, business development and marketing. In addition, IFS incurs investment advisory, staff and custody costs.
- 138 The cost centres that make up costs attributed to administration are set out in the table at Annexure 9. These costs are:
- (a) Administration expenses. Payments to 3<sup>rd</sup> party administrators, excluding costs incurred by the trustee for administration activities;
  - (b) Custody. Custody costs reflect expenses paid to the fund's custodian for the safekeeping of fund assets and reporting, such as valuation and taxation costs;
  - (c) Investment management fees. Direct fees paid to managers and advisers. It does not represent indirect fees deducted from unit prices;
  - (d) Staff expenses. The direct allocation of IFS staff cost allocated to the management of AUSfund;
  - (e) Travel and related expenses. Travel related expenses incurred by IFS employees undertaking AUSfund related trustee activities;
  - (f) Systems and telephony expenses. Network, IT and telecommunications expenses incurred by staff undertaking AUSfund related trustee activities;
  - (g) Premise and related expenses. Costs incurred in relation to office premises utilised by staff undertaking AUSfund related trustee activities;
  - (h) Audit expenses. Costs paid to registered company auditors for audit services in relation to annual statutory financial statements, risk management sign offs, and APRA reporting;
  - (i) Advisory and insurance expenses. Expenses incurred in relation to consultants, legal advisers and costs in relation to insurance policies including Professional Indemnity, Directors & Officers, Travel, Cyber and General (such as fixtures and fittings). Fees for insurance broking services are paid to IFSIS;
  - (j) Product expenses. Includes costs associated with regulatory levies, financial advice member support, data management and address matching. Address matching was a service used by AUSfund and also offered to participating funds whereby a cost recovery was made;

- (k) Estimated shared service expenses. Shared service costs include a proportional allocation of staff and staff related expenses associated with the following business functions; Board and Office of the CEO, finance and investment operations, marketing, business development, legal and compliance, human resources and facilities.<sup>9</sup>

## IRIS

- 139 Since 1 July 2015, SMI pays all administration expenses in relation to the operation of IRIS. This includes reimbursing IFS for its share of corporate (shared service) costs in relation to Board & CEO, finance and operations, human resources and payroll, business development and marketing.
- 140 Prior to 1 July 2015, SMI paid the fund expenses of IRIS, however the shared service costs related to the running of the fund and trustee entity were incurred by IFS but not charged.
- 141 The cost centres that make up costs attributed to administration are set out in the table at **Confidential Annexure 10**. The costs centres mirror the AUSfund cost centres outlined above, except for the following line items:
- (a) **General Marketing**: SMI's expenditure on General Marketing activities has been largely spent on essential communications to members, including website, and printing of PDS, Significant Event Notices, and annual reports. In recent years this item has supported an annual seminar programme where members are invited to hear about the fund's performance and changes in in the aged pension.
  - (b) **ORFR Transfers**: Expenses incurred by members in order to fund the APRA mandated operational risk reserve.

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<sup>9</sup> The costs are noted as 'shared' given staff performing these functions do so for AUSfund as well as other businesses within the IFS Group such as advice, non-super investments, and unpaid super collections.

## PART 6: THE NEW DAILY PTY LTD

### **A. Organisation and ownership**

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- 142 The New Daily was incorporated on 9 September 2011.
- 143 The New Daily began operations in November 2013. When operations commenced, The New Daily was owned by six shareholders comprising ISH and five not-for-profit industry superannuation funds in equal shares. In June 2016, ISH acquired 100% of The New Daily.

### **B. Governance**

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- 144 The constitution of The New Daily requires it to have a minimum of 1 director and maximum of 10 directors. The New Daily is currently governed by a board of 9 directors.
- 145 All Board members are appointed by the shareholder, ISH.

### **C. Principal business activities**

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- 146 The New Daily is an independent and free news website. It is a comprehensive 24-7 national news website providing coverage on national headlines, sport, weather, lifestyle – and importantly – money and personal finance news. ISH shareholders may utilise The New Daily as a platform to enhance their funds' branding, and educate Australians about their personal finances.
- 147 The New Daily is a member of the Australian Press Council. The content is governed by an editorial charter of independence to ensure The New Daily adheres to the highest standards of accuracy, fairness and balance. Motion Publishing Pty Ltd is contracted by The New Daily to deliver all aspects of the news service, including the editorial content, the business model and commercial operations.
- 148 As a free news service to the public, The New Daily's revenues are reliant on advertising, sponsorships and partnership revenue, which improves with scale.
- 149 The New Daily has been in start-up phase since its inception in May 2013. Since that time, underlying revenue has grown to approximately \$1.2 million per annum (FY18 forecast). In the past 12 months, readership has also expanded to approximately 2 million unique viewers per month.
- 150 The expense base has remained constant at around \$4 - \$5 million per annum over time. The trading losses incurred in each financial year has been declining with the underlying revenue growth and expense management initiatives. The New Daily relies on its parent entity, ISH, for ongoing funding support.

### **D. Answer to Questions 1 to 3**

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- 151 The New Daily is not aware of any misconduct by its directors, officers or employees, or any persons acting on its behalf, during the Relevant Period.
- 152 The New Daily has not identified any conduct, practice, behaviour or business activity within the Relevant Period which it considers falls below community standards and expectations.

**E. Answers to Question 4**

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153 Question 4 is not applicable to ISH as it does not apply members' funds.

154 However, to assist the Commission, a copy of The New Daily annual financial report for the 2017 financial year is at **Confidential Annexure 12**.