COMMONWEALTH OF AUSTRALIA

Royal Commissions Act 1902

ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

INDUSTRY SUPER AUSTRALIA PTY LTD'S RESPONSE TO THE SUBMISSIONS OF COUNSEL ASSISTING DATED 24 AUGUST 2018

A. Introduction

1 In its closing submissions (**CS**) for Module 5 of the Commission's hearings, Counsel Assisting invited submissions in respect of various "policy and general questions". This submission is made by Industry Super Australia Pty Ltd (**ISA**) in relation to those questions.

B. Political advertising and section 62 of the SIS Act

CS [825.1]: Is political advertising consistent with the intention behind section 62 of the SIS Act? Is any amendment to the SIS Act warranted, and if so, why?

2 "Political advertising", is not inconsistent with section 62 of the SIS Act. Nor is any change to the Act warranted. To the contrary, to regulate political advertising by trustees would be wrong in principle, would unfairly discriminate against not for profit trustees and be unworkable in practice.

The intention behind section 62 of the SIS Act

3 Section 62 of the SIS Act provides that trustees of regulated superannuation funds must ensure that the funds are maintained solely for one or more identified "core purposes" or for one or more of the core purposes and "ancillary purposes". The "core purposes" are specified in section 62(1)(a) of the SIS Act and concern the provision of benefits to fund members after their retirement, attainment of the age of 65 or death. The "ancillary purposes" are set out in section 62(1)(b) of the SIS Act and include the provision of benefits approved by the "Regulator".

4 The function of section 62 of the SIS Act is to define the permitted range of activities of a trustee of a regulated superannuation fund when dealing with trust funds. It is directed solely at ensuring that trustees exercise their powers for the specified core (or

core and ancillary) purposes.[1] It is not directed at the manner in which trustees seek to achieve those purposes. It says nothing about, for example, how trustees should go about attracting and retaining members, communicating with actual and potential members or making and managing investments. Those matters are left to the trustees' discretion and judgement.

Is political advertising consistent with the intention behind section 62 of the SIS Act?

5 While section 62 of the SIS Act imposes on a trustee the obligation to "maintain" the fund solely for the permitted activities, it is implicit that the trustee is able to incur, and charge the fund for, expenditure (e.g. administrative costs) incurred in administering the fund. Permitted expenditure includes the cost of maintaining and maximising benefits for fund members.

6 Whether or not political expenditure is consistent with section 62 of the SIS Act therefore depends solely on the reason this type of expenditure is incurred. If the reason is to maintain or improve retirement benefits for fund members, the expenditure is clearly consistent with the objective of section 62.

7 As APRA has previously stated:

> "*[i]f an individual fund was to advocate on certain policy issues, and the cost of such advocacy was funded with members' monies, the issue of whether or not such an activity was in breach of the sole purpose test would require an assessment of the activity and its connection with the superannuation purposes. If the activity is characterised as an expenditure or investment made in good faith and the trustee puts forth cogent reasons for believing that this will result in an improved retirement income outcome for the members (or the protection of that retirement income), then the trustee's conduct would be unlikely to be in breach of the sole purpose test (even if others might disagree with the trustee's reasoning).*"[2]

8 In ISA's respectful submission, that statement is correct. Political advertising, like any conduct trustees engage in, will be entirely consistent with section 62 of the SIS Act if it has been engaged in for one of the core (or core and ancillary) purposes.

Is any amendment to the SIS Act warranted, and if so, why?

[1] "Purpose" in this context has been held to mean the "end in view": *Aussiegolfa Pty Ltd (Trustee) v Commissioner v Taxation* [2018] FCAFC 122 at [172] – [176] per Moshinsky J (with whom Besanko J agreed).
[2] APRA, Answers to Questions on Notice, Senate Economic Legislation Committee, 9 June 2015.

9 In ISA's submission, no change to the SIS Act to prohibit political advertising is warranted. There are several reasons.

10 First, how superannuation funds are to be regulated is a highly charged and partisan political issue. Industry funds are subject to constant attack by retail funds. The trustees of those retail funds, or the firms that own those funds, regularly lobby government for changes in the regulatory framework. Trustees of industry funds are of the opinion that some of these changes will likely cause significant harm to fund members. Political advertising is undertaken to prevent this harm from occurring.

11 Second, changes to regulations concerning superannuation funds have the potential to significantly reduce members' retirement benefits. It is entirely appropriate, if not obligatory, in those circumstances that trustees both inform members of the proposed changes and take steps to prevent them from occurring.

12 Third, political advertising plays an important role in the democratic process. As a basic starting point, it is of fundamental importance that elected representatives have access to as wide a range of information as possible. Further, research shows that political advertisements can educate and engage voters, and only in rare circumstances does it have any negative effect.[3] Put a little differently, political advertising fulfils a vital democratic function which has potential to bring about a more informed and participatory citizenry.[4] These effects can be concentrated among citizens who have the greatest need: those who possess less political information to begin with.[5]

13 Fourth, any prohibition on political advertising is likely to be difficult, if not impossible, to implement in practice. Political advertising is in substance a form of political lobbying, and there will always be political lobbying (of some form) with politicians or senior departmental staff. It would be impossible to seek to prevent such communications from occurring.

14 Fifth, any prohibition on political advertising by trustees of superannuation funds would most likely be inconsistent with the constitutional freedom of communication on matters of government and politics. Communication on matters of government and politics is an indispensable incident of Australia's constitutional system of government.[6] Any limit on the ability to engage in such communication must be reasonably appropriate and

[3] M Franz et al, *Campaign Advertising and American Democracy* (Temple University Press 2007). See also Oxford University, *Oxford Research Encyclopaedia of Politics* (online at 10 September 2018), M Motta and E Franklin Fowler, 'The Content and Effect of Political Advertising in US Campaigns' 25.
[4] M Franz et al, 'Campaign Advertising and Democratic Citizenship', (2004) 48(4) *American Journal of Political Science* 723.
[5] Ibid.
[6] *Aid/Watch Incorporated v Commissioner of Taxation* (2010) 241 CLR 539 at [44].

adapted to achieving an object which is compatible with the maintenance of that system of government.[7] An absolute prohibition on trustees of superannuation funds engaging in political advertising is unlikely to satisfy that requirement. The ostensible object of the prohibition — ensuring that superannuation funds are used for members' benefit — is sufficiently achieved by the existing prohibition in section 62 of the SIS Act.

CS [825.2]: Is there identifiable detriment to consumers from advertising by super funds or particular advertising (such as Fox and Henhouse)? Is there identifiable benefit to consumers from advertising by super funds or particular advertising?

Fox and Henhouse

15 The "Fox and Henhouse" campaign did not cause detriment to consumers (particularly members of industry funds). To the contrary, it benefitted them.

16 The "Fox and Henhouse" advertising campaign was commenced in response to attempts by the banking sector to effect legislative and regulatory changes to (among other things) the current award and enterprise bargaining system that would remove superannuation as an element of awards.[8] The changes that the banking sector sought included a structure that would delegate the nomination of default funds to employers only.[9] The "Fox and Henhouse" campaign formed part of the funds' response to lobbying by the banking sector for those changes.

17 The lobbied-for change to default superannuation would likely have caused significant detriment to members of industry funds. As Mr Silk of AustralianSuper Pty Ltd explained:

> "*[t]he proposal was to essentially strip superannuation from the industrial system and allow employers the unfettered right to choose the default fund that would apply at their workplace, and in doing so, create the likelihood, based on research that had been undertaken, that retail wealth management organisations, in particular the banks, would seek to leverage their business relationship with employers with a view to influencing them to choose, in the case of the banks, a bank-owned fund as the default fund to apply to the workplace. And the misselling, the cross-selling, the conflict of interests in particular that would apply through that model present a situation where the very great likelihood, indeed, the express design objective of such a change,*

[7] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 561. See also *McCloy v New South Wales* (2015) 257 CLR 178 at [2].
[8] Witness Statement of Ian Scott Silk dated 31 July 2018 at [15.10].
[9] Ibid.

would be to see millions of Australians that would otherwise be in higher performing industry funds in poorer performing retail funds."[10]

18 The Fox and Henhouse campaign sought to inform fund members and elected representatives about the risks of various legislative and regulatory change being sought by the banking sector, and to prevent those changes from occurring. To date, it has achieved that objective.[11] It has therefore been to the considerable benefit of fund members.

Benefit to consumers from advertising by super funds

19 There are identifiable benefits to consumers from advertising by superannuation funds. They include:

(a) preventing legislative and regulatory changes adverse to fund members' retirement benefits (e.g. the Fox and Henhouse campaign);

(b) increasing funds' scale. Advertising by funds helps them to attract and retain members and thereby increase the amount of funds they manage. This can lead to funds having greater economies of scale and lower costs. At least in the case of most industry funds, the lower the funds' costs, the better the returns their members receive.[12] Advertising by super funds is also important to enable challengers and new entrants to better compete with established brands; and

(c) informing and educating consumers about different funds' strategies, charges, relative performance, and other factors relevant to member financial outcomes, and thereby better enabling them to choose a fund that will deliver superior benefits in their retirement. In ISA's submission this provides a significant benefit to consumers. According to the Productivity Commission, for example, a typical full-time worker in the median fund in the bottom quartile (in terms of investment performance) over the worker's lifetime would retire with a superannuation balance 53% (or $635,000) lower than if he or she were in the median top-quartile fund. ISA's "compare the pair" campaign is an example of this type of advertising.

[10] T4546.9–20.
[11] T4554.40–44.
[12] See e.g. Witness Statement of David Elmslie dated 26 July 2018 at [127] and Witness Statement of Ian Silk dated 31 July 2018 at [7.1] and [15.4].

C. Section 68A of the SIS Act

CS [825.3]: Is it appropriate, as a response to conduct of superannuation trustees that seeks to induce employers to select funds, or affect their decisions as to default funds, to make alterations to section 68A of the SIS Act to widen the prohibition?

20 In ISA's submission it would not be appropriate to widen the prohibition in section 68A so that it applies to conduct that seeks to "induce" employers to select funds or "affect" employers' decisions as to default funds for two reasons. Many activities engaged in by trustees for the purpose of "inducing" employers or "affecting" their decisions are to the benefit of members. This includes, for example:

(a) marketing and promotional activity. As explained above, marketing and promotional activity can help prevent legislative and regulatory changes contrary to members' interest, increase funds' scales and inform and educate consumers;

(b) hosting educational and business seminars which can help inform employers about the relative benefits and performance of different funds.

21 Further, such a prohibition would disproportionately disadvantage industry super funds. Industry funds (unlike retail funds) have a "wholesale distribution model" that relies heavily on the relationships they develop with employers.[13] As industry funds do not have established banking relationships with employers,[14] a reasonable trustee could seek to develop and maintain such relationships through corporate hospitality[15] which, like any marketing activity, may have the ultimate purpose of "inducing" employers to select funds or "affecting" their decisions. Regulation that seeks to prohibit corporate hospitality would therefore limit industry funds' ability to compete. Given the consistent superior performance of industry funds compared to retail funds, limiting industry funds' ability to compete would be to the detriment of consumers.

22 In ISA's submission, a more appropriate and effective method of ensuring that employers' selection of default funds is in their employees' interest would be to enliven the Fair Work Commission (**FWC**) review of workplace superannuation products provided for in Division 4A of Part 2-3 of the *Fair Work Act 2009* (Cth) (**FWA**). As the Productivity Commission has explained:

> *"[i]n 2012, the Australian Government legislated a number of changes to the system for listing default funds in awards … The FWC full bench was empowered to make decisions for each award every four years based on an*

[13] T4868.36–43.
[14] T4868.23–24.
[15] T4868.36–43

> *advisory Default Superannuation List chosen (on the basis of merit) by an Expert Panel within the FWC. And all funds were enabled to appear before the Panel to make a case for inclusion …*
>
> *An Expert Panel was set up in January 2014. However, following a number of changes due to concerns about conflicts of interest, the Federal Court in June 2014 declared the panel was not correctly constituted under the Fair Work Act 2009 (Cwlth) … The Panel stopped dealing with default listings (Ross 2014), and the system put in place by the new legislation effectively stalled. No new appointments have been made to the panel; the revised system is dormant."*[16]

23 The system appears to be "dormant" because the President of the FWC considers that he is not able to constitute a new Expert Panel until the Government appoints a new Expert Panel member to the FWC.[17] It appears that the President has raised this matter with the Minister administering the FWA on numerous occasions.[18]

24 The system of review created by Division 4A of Part 2-3 of the FWA provides an important mechanism for excluding poor performing products from modern awards. When the Expert Panel determines whether a product should be included in the Default Superannuation List it must have regard to (among other things) the appropriateness of the fees and costs of the product, the net returns on contributions invested in the product, whether the fund's governance practices are consistent with members' best interests, and the appropriateness of insurance offered in relation to the product.[19]

25 In ISA's submission, enlivening this system would help prevent employers from selecting poor performing products as well as giving funds incentive to improve the performance of their products.

26 However, that would only provide for review of funds in modern awards. It would not limit employers' ability to select poor performing funds for employees not covered by awards. In ISA's submission a system should also be introduced to cover the selection

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[16] Productivity Commission, *Superannuation Competitiveness and Efficiency: Draft Report,* April 2018, at 427. The reasons of the Full Federal Court for making the declarations referred to by the Productivity Commission are set out in *Financial Services Council Ltd v Industry Super Australia Pty Limited* [2014] FCAFC 92.

[17] Fair Work Commission, *2013-14 Annual Report*, 15 October 2014, at 55: *"At the end of the reporting period the Commission was awaiting appointment of an Expert Panel Member before proceeding further with the review of default superannuation fund terms in modern awards."* See also Evidence to Senate Education and Employment Legislation Committee, Additional Estimates Hearing, Parliament of Australia, Canberra, 26 February 2015 (President of FWC), at 8: *"That bench has been rescinded and it will not be reconstituted until an additional member is appointed. That has been the position since early June last year."; "The default superannuation fund review does not look like it is going anywhere quickly. It cannot proceed until an additional member is appointed."*

[18] FWC, Submission to Productivity Commission (19 December 2016) at [12].

[19] See FWA, section 156F.

of default funds other than through awards. That could be done by amending the National Employment Standards to require that default funds in any award, employment contract, enterprise agreement or other registered agreement can only include funds approved by the FWC following a process similar to that set out in Division 4A of Part 2-3 of the FWA.

27 A further useful reform would be to prohibit banks from providing business banking services or products to any employers that have selected a default superannuation product supplied by an entity related to the bank. Such a reform would be useful because research has shown that, despite the prohibition in section 68A of the SIS Act, banks often offer benefits to employers (such as discounts on business banking and insurance products) if the employer chooses a particular fund as a default fund.[20] Further, 33% of the employers surveyed that were offered those benefits say they were persuaded to switch to a super fund promoted by their bank. 57% report that they are still considering switching.[21] This suggests that section 68A of the SIS Act is not sufficient to prevent banks from seeking to improperly affect employers' decisions as to default funds. A prohibition on banks from providing any business banking services or products to employers that have chosen a default fund supplied by an entity related to the bank is warranted.

D. Selling of superannuation

CS [825.7]: Is it appropriate that superannuation be sold through bank branches? Is it reasonable to think that there is any prospect that this is likely to produce an outcome that is in the best interest of consumers?

28 At present, when banks provide general advice to consumers and merely sell superannuation products, they are not prevented from making incentive payments to staff based on the number of superannuation products the staff or their teams sell,[22] or setting branch-level or team-level targets that do not involve incentive payments but do involve KPIs relevant to their performance reviews. In these circumstances, ISA submits that it is wholly inappropriate for banks to sell superannuation through branches. Bank staff are not required to act in customers' best interests,[23] therefore bank staff selling the products may have the ability and incentive to sell products that are to the detriment of consumers.

29 Importantly, the incentive and ability bank staff have to sell products that are not in customers' interest is not limited to staff in bank branches. It applies to any bank sales

[20] UMR Strategic Research, 'SME Employer Attitudes to Superannuation' (February 2015), prepared for Industry Super Australia.
[21] Ibid.
[22] See *Corporations Act 2001* (Cth), section 963B(c).
[23] Cf *Corporations Act 2001* (Cth), section 961B.

that are made without the provision of personal financial advice, including sales through call centres or websites.

CS [825.8]: Are there statutory reforms that are required to address this problem (if it is a problem) or are the existing laws with respect to personal financial advice and general financial advice sufficient? What is the nature of the "advice" that a customer of a bank receives when told by a bank branch staff member about the availability of a superannuation product offered by a bank?

30 To address this problem, financial services entities should not be permitted to provide incentives to staff that are linked to the volume of superannuation products staff sell under any circumstances, whether through volume based incentive payments or setting key performance indicators (at an individual, branch or team level), irrespective of whether the staff work in a branch.

F. Relationship between trustees and financial advisers

CS [825.15]: Are legislative interventions to remove grandfathered commissions and ongoing service fees from superannuation accounts appropriate? If so, why? If not, why not?

31 In ISA's submission, legislative intervention to remove grandfathered commissions and ongoing service fees from superannuation accounts is appropriate.

32 First, grandfathering exceptions were introduced as a transitional arrangement following the introduction of FOFA reforms. It has been over five years since those reforms. Transitional arrangements are no longer required.

33 Second, the Commission has heard evidence that a range of trustees — including NULIS,[24] IIML,[25] SPSL[26] and CFSIL[27] — have relied extensively on grandfathered commissions or ongoing service fees to the detriment of members. They have kept members in legacy products even when new products have been introduced that are likely to provide greater benefits to their members.

34 ISA agrees with evidence of Mr Kell of ASIC that grandfathering "enables the continuing payment of commissions that generate conflicts of interest and unnecessary costs widely across the financial system", and that "it would be highly desirable to have this dealt with at a policy level".[28]

[24] See e.g, T4390, T4397, T4400–4401, Exhibit 5.9.
[25] See e.g, T4590–4592 and T4599-4600.
[26] See e.g, SUN.1505.0002.0002.0041 at 0045.
[27] See e.g, T4962.
[28] T5258.

CS [825.16]: Are there possible detrimental effects on the provision of high quality financial advice by such changes? If it is said that there are such detrimental effects, then the detriments and the reasons for the detriments should be precisely identified. For example, if it is said that it is unlikely that consumers will be willing to pay for the true value of financial advice then, amongst other things, it ought to be explained how the "true value" of financial advice is to be determined, why consumers will pay for the true value of other services but not for financial advice and why it is not sufficient to allow consumers to make an informed choice as to the specific price that is to be paid for a specific service.

35 ISA is not able to identify any detrimental effects on the provision of high quality financial advice by removing grandfathered commissions and ongoing service fees from superannuation accounts. It is, however, possible that fewer pieces of financial advice could be supplied.

G. Managing conflicts

CS [825.17]: Are there structures that raise inherent problems for a superannuation trustee being able to comply with its fiduciary duties? For example, where a trustee is a dual-regulated entity, that would seem to raise an inherent conflict of interest, or the potential of a conflict of interest. Are there other structures such as investment of funds in insurance policies issued by related party insurers or the integration of a superannuation trustee into an advice business that also raise inherent problems? Is it possible to say that these conflicts are ever manageable?

36 In ISA's submission there are structures that raise inherent problems for a superannuation trustee's ability to comply with its fiduciary duties, namely structures by which retail funds acquire products and services from related parties.

37 For super fund trustees owned by for-profit financial conglomerates, the engagement of related parties under common control with the trustee is "part of the business model."[29] However, the use of related parties can be valuable for members. Industry super funds use related parties that are owned by the trustee or the fund (or by many funds) to "attain economies of scale without paying third-party profits."[30]

38 The case studies in this module of the Commission's hearings have identified a range of retail funds that have engaged transactions with related parties that have been to the benefit of the trustee and its related parties, but to the detriment of fund members. That evidence is consistent with research which shows that retail funds that use related-party

[29] K Liu & B R Arnold, 'Australian Superannuation: the Outsourcing Landscape' (Working Paper, APRA, 12 July 2010) at 5.
[30] Ibid. See also K Liu & B R Arnold, 'Australian Superannuation Outsourcing: Fees, Related Parties and Concentrated Markets' (Working Paper, APRA, 25 June 2010).

service providers underperform against their peers on average by 1.29% to 1.32% per annum at the total fund level.[31]

39 ISA is not able to identify any way of satisfactorily managing these conflicts. It also considers that a prohibition on the supply of superannuation products by retail entities is not feasible.

40 However, there are steps that can be taken to reduce the detriment that conflicts of interest cause to consumers, such as:

(a) enlivening and bolstering the FWC review of superannuation products in modern awards (see paragraphs 22 to 26 above);

(b) prohibiting banks from providing incentives to staff that are linked to the volume of superannuation products staff sell (see paragraph 30 above);

(c) in circumstances where a member is switching out of an FWC-approved superannuation product to a non-approved product:

(i) requiring the trustee of the incoming switch to provide prescribed comparative information to the member about the two products. The prescribed information, at a minimum, must include investment performance and fees over standardised periods — such as the past 3, 5, 7 and 10 years — and the cumulative dollar impact of these differences;[32] and

(ii) requiring the member to provide, as part of the member's authorisation to transfer the funds, signed confirmation that they have read and understood the prescribed information.

H. System changes

CS [825.21]: Is one way of addressing and discouraging misconduct on the part of superannuation trustees to seek to encourage improvements to outcomes for members whose contributions are made to MySuper products or is the link too tenuous to justify recommending any system changes to the default system?

41 In ISA's submission, merely encouraging trustees to improve outcomes for members that have MySuper products is unlikely to address the misconduct identified in the Module 5 hearings.

[31] K Liu and E Ooi, 'The Impact of Related-Party Outsourcing and Trustee Director Affiliation on Investment Performance of Superannuation Funds' (Working Paper, APRA, 14 February 2018) at 13.
[32] Where multiple products are being switched into, their performance and fees should be presented as an aggregate, and must include all fees and costs, including any platform or advice costs.

42 The misconduct that has been identified arises in significant part because market forces are unable to discipline retail funds' conflicts of interest.

43 Superannuation trustees, especially of retail funds, cannot be relied upon to ensure their products and services are in the best interests of members. Market forces also cannot deliver this outcome. Merit-based reviews to screen out products, such as the FWC review of default funds, are the only approach reasonably likely to be effective in a system characterised by consumer choice and competition.

CS [825.22]: Is it appropriate, as a response to misconduct of superannuation trustees, to apply an additional filter to MySuper authorisations so as to require outcome assessments? If so, what are the general parameters for such a system change and who is appropriate to apply the test?

44 In ISA's submission, requiring outcome assessments for MySuper products is not an appropriate response to misconduct by trustees.

45 First, most misconduct by trustees concerns Choice products, not MySuper products. The misconduct identified in the Module 5 hearings was primarily engaged in by retail funds, and 82% of assets in retail funds are in Choice products.[33]

46 Second, in ISA's submission a more appropriate way to improve performance of MySuper products is to enliven and bolster the FWC review of default funds in modern awards in the manner described above (see paragraphs 22 to 25 above).

47 However, outcome assessments for Choice products would, in ISA's submission, be appropriate. Such assessments are desirable because they would be directed at the products that cause consumers most harm. An outcome assessment for Choice products could, for example, have reduced the harm to members arising from the offering of underperforming cash options by retail funds illustrated in the case studies of this module. In ISA's submission, Choice option assessments should be performed by an independent regulator and should focus on net-returns for members over the long-term, applying criteria such as those set out in section 156F of the FWA.

48 In addition to product-level merit based quality assessments, trustee-level assessments should also be performed by an independent regulator. Trustees are responsible for fund-level strategies, not just products. Those strategies include determining what products are offered to members, how many options are offered, the distribution and offering strategy that results in members being allocated to certain products, the terms

[33] APRA, Annual Superannuation Bulletin, June 2017.

of outsourcing arrangements, the features of each product (such as fees and asset allocation) and overall investment strategies.

49 ISA considers the quality of trustee decision making (including the quality of products that trustees choose to offer) is likely to be reflected in long term fund-level net returns, which APRA has audited and published for approximately 20 years. Accordingly, ISA considers that it would be appropriate for APRA-audited, fund-level net returns to form the basis upon which the independent regulator would assess trustee performance. The argument advanced by retail funds that fund-level returns do not reflect the performance of the specific options held by members or members' risk preferences is not supported by the evidence. Research shows that fund-level rates of return correlate strongly with option-level returns.[34] In any event, product-level assessments may be unreliable until a track record for the product has been established.[35]

CS [825.23]: Is it appropriate, as a response to the conduct of superannuation trustees that might inhibit the consolidation of multiple superannuation accounts of a person, to introduce some form of "stapling" so that a person's account for receipt of default contributions is linked to the person and travels with the person when she or he changes job? Is this a practical method of addressing this type of conduct noting that it is not suggested to be misconduct?

50 In ISA's submission "stapling" is not the best way to minimise or avoid consumers having multiple superannuation accounts. First, it creates the risk of members being permanently attached to poor performing products.

51 Second, it creates the risk of members having products that do not suit their personal circumstances. Products are often tailored to suit the needs of workers in particular industries. Default insurance in particular often varies between industries. For example, workers in "high risk" industries require different coverage. Stapling workers to their accounts may therefore leave them with more or less insurance than is desirable if they move between industries.

52 In ISA's submission, a better way to prevent multiple accounts would be to require that, when a member changes employment, the member's entitlements automatically transfer from the old employer's workplace default fund to the new workplace default fund (unless the member chooses otherwise). If a member starts a second job, their contributions from the second job should be placed in their existing active fund. Under

[34] See the results of the research set out in ISA, 'Are Comparisons Based on Superannuation Fund-level Performance Useful?' (Research Report, April 2018).

[35] APRA's views on this topic have changed over time. In 2008, it appeared to favour assessments based on long term fund-level net returns: see APRA, 'A Response to the Review of APRA's Investment Performance Statistics of the Australian Superannuation Industry' (2008) at 3. In 2017, it appeared less supportive of such assessments: see APRA, 'Insights Issue Two 2017'. For the reasons referred to above, APRA's initial view is to be preferred.

this approach, a member would enter the workforce and join a product under the protections offered by the industrial safety net. If they change employment, and that change moves them into a new industry, their entitlements would automatically transfer to a new fund that is appropriate for the new industry in which they work — unless they decide otherwise.

21 September 2018