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

AMP Group Submission

Counsel Assisting's Policy and General Questions in Closing Submissions for Round 5

21 September 2018

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OVERVIEW

1. AMP welcomes the opportunity to provide a written submission in response to the policy and general questions that Counsel Assisting posed to the industry in its closing submissions for Round 5: Superannuation.

2. AMP is one of the largest providers of superannuation products and services in Australia. AMP has been active in the public policy debate over the last 20 years, commencing with the reforms flowing from the Wallis Inquiry in 1997.

3. The last two decades have been characterised by very significant changes to both legislation and regulation surrounding the manufacture and distribution of superannuation products. The taxation treatment of superannuation has changed markedly since 2004, with changes being made at almost every Federal Budget since that time.

4. AMP has engaged with successive governments with the aim of improving member outcomes. In particular, AMP supported the Cooper Reforms that led to the introduction of MySuper in 2013. This was a simple new product with increased transparency and lower fees.

5. Similarly, AMP supported the reforms that flowed from the 2009 Parliamentary Joint Committee on Corporations and Financial Services Joint Inquiry into Financial Products and Services. This led to the Future of Financial Advice (**FoFA**) reforms which were introduced in 2012. FoFA had multiple objectives including improving accessibility to financial advice and introducing a 'best interests' duty (i.e. putting the customer's interests first).

6. The government now has several legislative measures before the Parliament that build on those earlier reforms. These include measures that will provide genuine member choice, increase transparency and improve member outcomes.

7. The Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill is presently before the Senate. The Bill is designed to require trustees to assess, on an annual basis, whether the outcomes that are being delivered by MySuper products are in fact promoting the financial interests of members. AMP supports the objectives of this Bill. This Bill directly relates to several of the questions posed by Counsel Assisting.

8. Similarly, the government has proposed a further measure – Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill which will implement some of the reforms proposed in the 2014 Financial Systems Inquiry. The Bill aims to ensure that products are targeted at the right people and it also provides a power for ASIC to intervene when there is a risk of significant consumer detriment from a product.

9. AMP has supported the objectives of each of the above reforms, and all of the reforms embedded three principles:

   (a) the need for improving member outcomes;

   (b) the need for increased transparency for members; and

   (c) ensuring members' best interests are met.

10. In considering our response to the policy and general questions posed by Counsel Assisting, AMP has endeavoured to focus on these three principles in its responses. They are at the heart of AMP's policy thinking.

RESPONSE TO QUESTIONS

Advertising

Questions 1 and 2

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?

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?

11. AMP does not use political advertising, nor does it have an intention to do so in the future. AMP considers that any advertising paid for by superannuation funds needs to comply with the sole purpose test in s 62 of the *Superannuation Industry (Supervision) Act* 1993 (Cth) (**SIS Act**). AMP considers there is no need for amendment to s 62 of the SIS Act if compliance is enforced. However, additional regulator guidance would assist interpretation.

Section 68A of the SIS Act

Questions 3, 4 and 5

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?

How wide should the prohibition be – should it extend to prohibiting providing benefits to employers for the purpose or with the intention of inducing the selection of the fund as the default fund for employees, or affecting the decision, or being likely to induce or affect?

Are there matters of principle that would justify such a change? Are there problems that would arise in the application of the law?

12. AMP believes that it is necessary to make changes to s 68A of the SIS Act as we strongly believe the prohibition on providing inducements to employers should be strengthened.

13. The twin policy principles that should be adopted are:

    (a) There should be no inducements provided to an employer and/or tender consultant to encourage a particular decision in relation to the default super fund for their employees.

    (b) Members' best interests should be prioritised over the commercial interests of the employer and/or tender consultants.

14. In addition, AMP believes that the prohibition should be extended to include inducements provided for the purpose of, or with the intention of, inducing a decision to:

    (a) select a fund (a new default arrangement); or

    (b) maintain an existing fund arrangement.

15. AMP believes that all inducements should be prohibited, for prospective and current employers and tender consultants that are included in the default fund selection process.

16. It should be noted that statements made by Hostplus in their witness appearance during the superannuation hearings were not accurate in relation to AMP insofar as they suggest that all superannuation fund providers offered inducements to employers. AMP makes no offers of inducement to employers to select funds.

17. AMP is supportive of ASIC's guidance to employers released in 2016.[1] However, AMP believes that this regulatory guidance is not sufficient to prevent undue conflicts of interest. Legislative amendments are necessary, both to the SIS Act and the corresponding regulations to strengthen the prohibition and remove any conditionality that exists.

18. The prohibition should include a ban on all entertainment and gifts, in addition to the incentives, discounts, allowances, rebates or credits that are currently banned under s 68A of the SIS Act. Employers and tender consultants should only be invited by the Trustee or related party of the Trustee to events on the basis of education, business improvement and/or improved member outcomes for the employer and their employees in relation to their superannuation accounts. All entertainment related events should be prohibited. This will ensure that decisions made by prospective or current employers and/or tender consultants are only made in the best interests of members.

Payments from external responsible entities of managed investment schemes

Question 6

Is it appropriate for the trustee of a superannuation fund to retain payments from the responsible entity of a managed investment scheme where that payment is derived from the investment of members' money?

19. In principle, AMP considers that it is appropriate for a trustee and/or its related entity to retain these payments where:

    (a) The retention is taken into account (whether directly or indirectly) in determining the level of fees charged to and paid by superannuation

[1] ASIC, *16-038MR ASIC guidance to employers about super*, 16 February 2016, https://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-038mr-asic-guidance-to-employers-about-super/

members for the relevant investment option/s and superannuation product; and

(b) the trustee has appropriate conflicts of interest management arrangements in place.

20. AMP will continue to work with the industry to improve the transparency of fees and costs for members.

Selling of Superannuation

Questions 7 and 8

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 interests of consumers?

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?

21. While AMP does not have bank branches, nor do we sell superannuation through bank branches, AMP provides general advice in relation to superannuation and other financial services products to customers. AMP supports recent recommendations to clarify the various forms in which factual information and/or financial advice may be conveyed to a customer.

22. AMP believes that there is a role for all forms of financial advice for customers including:

(a) personal advice;

(b) scoped advice (limited personal advice);

(c) intra-fund advice;

(d) general advice; and

(e) no advice (the provision of factual information).

23. AMP supports the Productivity Commission's recent recommendation in its report on Competition in the Australian Financial System,[2] to rename 'General Advice' to improve consumer understanding. This includes the removal of the term 'advice' from 'General Advice', so as not to associate or confuse it with 'Personal Advice', which takes into account a person's individual objectives, financial situation and needs.

24. While at this stage, the final form of the revised terminology is yet to be determined, AMP supports consumer testing of alternative terminology to replace the term 'General Advice'. This recommendation is consistent with the Financial System Inquiry[3] recommendation in December 2014.

25. AMP also supports strengthening general advice frameworks across the industry and aligning these improvements with the recommendations in ASIC's recently released Report 587 – The Sale of Direct Life Insurance.[4] While ASIC Report 587 relates to the sale of direct life insurance, its recommendations could be applied to general advice for other financial services products including superannuation, including for inbound and outbound calls to existing customers.

26. AMP is not supportive of changes to the obligations (licensing and regulatory) that are associated with providing general advice. AMP believes that financial product issuers and advice licensees (including authorised representatives) should continue to be able to provide general advice. Any change to the obligations associated with providing general advice would require consultation with the industry.

[2] Productivity Commission, *Competition in the Australian Financial System Inquiry Report*, 29 June 2018, recommendation 10.2
[3] *Financial System Inquiry Final Report*, 7 December 2014, recommendation 40
[4] ASIC, *Report 587 – The Sale of Direct Life Insurance*, 30 August 2018

Engagement by superannuation funds with Aboriginal and Torres Strait Islander people

Questions 9-13

Are the identification procedures used by superannuation funds appropriate for their Aboriginal and Torres Strait Islander members?

- *If those procedures are appropriate, are those identification procedures sufficiently understood and implemented by staff on the ground?*
- *If those procedures are not appropriate, what should be changed?*

Should superannuation funds be required to record whether their members identify as Aboriginal or Torres Strait Islander people?

Should those superannuation funds who do not currently permit the early release of superannuation on the basis of severe financial hardship do so?

Should the lower life expectancy of Aboriginal and Torres Strait Islander people be taken into account in the decision-making processes of superannuation funds when considering how to administer or release the funds of Aboriginal and Torres Strait Islander people? If so, how?

Should the categories of person permitted by legislation to be the subject of a binding nomination be changed to reflect Aboriginal and Torres Strait Islander kinship structures? If so, how should the categories be broadened?

27. AMP notes and supports the Financial Services Council (**FSC**) comments included in the FSC submission in relation to these questions. AMP will work collaboratively with the FSC in achieving the objectives set out in its submission.

Discretion to appoint and remove directors

Question 14

Is it appropriate for shareholders of RSE Licensees to retain a broad discretion to appoint and remove directors? Or should there be an obligation imposed on shareholders to exercise such powers in the best interests of the members?

28. AMP considers that it is appropriate for shareholders to retain broad discretion to appoint and remove directors, provided that:

    (a) directors are appointed on the basis of their skills and experience; and

    (b) conflicts of interest are appropriately managed.

29. The policies required to be followed for the appointment of superannuation trustee directors ensure that directors must possess the relevant skills and experience to properly discharge the duties of the trustee in the best interests of members.

30. AMP believes that the appointment of superannuation trustee directors should take into consideration requirements similar to those of the *Future Fund Act* 2006 (Cth) (**FFA**) which requires that a potential board member must have:[5]

    (a) substantial experience or expertise; and

    (b) professional credibility and significant standing;

    in at least one of the following fields:

    (c) investing in the range of assets typically held by superannuation funds;

    (d) the management of investments by superannuation funds;

    (e) corporate governance.

[5] FFA, Part 4, Division 2 – Establishment and functions of the Future Fund Board of Guardians, s 38 – Membership

Relationship between trustees and financial advisers

Questions 15 and 16

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

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.

31. AMP is committed to providing high quality advice and ensuring that financial advice is compliant, accessible, affordable and available.

Grandfathered commissions

32. The issue of grandfathering of commissions was considered by the Parliamentary Joint Committee on Corporations and Financial Services when it undertook its Inquiry into Financial Products and Services in 2009. At the time it was noted that reforms should be forward facing, and that retrospective legislation brought challenges with it.

33. Importantly, Treasury noted in its submission to the Royal Commission dated 13 July 2018 that to end grandfathering would be 'complicated and difficult to legislate'.[6] Treasury indicated that the removal of grandfathered commissions was not straight forward and could negatively impact the viability of some financial advice practices, with implications for their owners, employees and customers.

[6] Treasury, *Submission on key policy issues*, 13 July 2018, paragraph 180

34. It is also important to recognise that both ASIC[7] and Treasury[8] noted there may be constitutional issues associated with banning grandfathered commissions.

35. In light of the above, AMP:

    (a) Agrees with Treasury and ASIC that there may be constitutional issues associated with banning grandfathered commissions.

    (b) Notes that legislative measures to remove grandfathered commissions risk extinguishing the property rights of existing contracts and accordingly AMP does not support legislative measures of this nature.

    (c) However, in light of community sentiment surrounding grandfathered commissions, AMP supports transition away from grandfathered commissions in a manner and timeframe agreed with the industry together with appropriate legislative reform including:

        - government and regulatory facilitation for scoped advice, and
        - government support for the removal of impediments to the transition for members, for example capital gains tax relief.

        Such legislative measures would aid in the transition to contemporary products without grandfathered commissions, if it is in members' best interests to do so.

    (d) Supports increased and transparent disclosure and reminders of grandfathered commissions in members' annual statements throughout the transition period.

36. A reasonable transition period is required to provide sufficient time for industry participants to implement required changes, including to business models, systems, disclosure documents, advice and communications to members, to minimise unintended consequences for customers, financial advisers and the community in general.

37. Finally, AMP notes APRA's views in their recent submission in response to Counsel Assisting's closing submissions on superannuation, which include that

[7] ASIC, *Submissions of the Australian Securities and Investments Commission Round 2: Financial Advice*, 7 May 2018, paragraph 12

[8] Treasury, *Submission on key policy issues*, 13 July 2018, paragraph 180

"*APRA does not accept as a blanket proposition that grandfathered commissions looked at in the overall context of members' best interests are necessarily contrary to those interests based on the current state of the law, the current structure and operations of most RSE Licensees and the superannuation industry as a whole*."[9]

Ongoing service fees

38. Ongoing service fees are a fee option provided to clients in accordance with the opt-in renewal notice and Fee Disclosure Statement (FDS) regime introduced under FoFA. This means that every two years, a client receives a notice from their financial adviser and must opt-in to continue the ongoing service arrangement with their adviser. In this way, ongoing service arrangements are more appropriately termed a '2-year service arrangement' rather than an 'ongoing service arrangement' as each client must opt into the arrangement every 2 years for the arrangement to continue.

39. In addition, under the current regulatory regime, a Fee Disclosure Statement must be provided to each client every 12 months setting out the following:

    (a) the services that the client and adviser had agreed would be provided over the course of the year;

    (b) the services that the client actually received from the adviser; and

    (c) the cost of those services.

40. AMP supports providing choice to customers in the way that they pay fees for service from their financial adviser in relation to their superannuation, including upfront one-off service fees, ad-hoc one-off service fees and ongoing service fees. AMP also supports choice for superannuation members to pay these fees from both inside or outside their superannuation account, depending on the customer's preference.

41. The advantages of ongoing service arrangements include:

    (a) regular ongoing personal interactions between the financial adviser and the customer;

[9] APRA, *Written Submissions of the Australian Prudential Regulation Authority (APRA) in response to specific findings Round 5: Superannuation*, 31 August 2018, paragraph 20

(b) the ability for the customer to contact the adviser at any time throughout the year;

(c) the provision of information and services in relation to changed regulatory and legislative conditions, for example in the Federal Budget context, or when legislation or Centrelink rules change; and

(d) the capability for immediate contact with the adviser in the event of changes to market circumstances.

42. An ongoing relationship with a financial adviser is both important to customers and highly valued by them.

43. Furthermore, the payment of ongoing service fees from superannuation accounts provides members with a tax-efficient and cashflow effective payment option.

44. In addition, AMP believes that product issuers and trustees should do more to ensure that the fees deducted from a superannuation account have been approved by the member. AMP advocates for ongoing service fees to be automatically switched off by the product issuer after 2 years, if the product issuer has not received confirmation that the member has agreed for the fees to continue. This process should be automated to improve the control and overall member outcomes.

45. AMP also supports working with advice licensees to manage the process of obtaining client confirmations for ongoing service fees on a timely basis.

46. AMP believes that such an automated process initiated by the product issuer in relation to ongoing service fees being paid from a member's account would mitigate the risks identified as matters of concern for the Royal Commission and satisfy ASIC's view as stated in their submission to the Royal Commission, that "platform operators should be expected to have controls in place to ensure that fee recipients are legally entitled to the funds removed from client funds".[10]

47. AMP also supports measures to provide greater transparency to members of ongoing service fees paid from their superannuation accounts on their annual statements.

[10] ASIC, *Submissions of the Australian Securities and Investments Commission Round 2: Financial Advice*, 7 May 2018, paragraph 19

48. For these reasons AMP does not support legislative intervention to remove ongoing service fees paid from superannuation accounts. AMP is concerned that this would have a significant negative impact on many superannuation members and result in unintended detrimental consequences including making financial advice less affordable and less accessible to those superannuation members who need it most.

Managing Conflicts

Questions 17 and 18

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?

If certain structures do raise inherent problems, is structural change of entities, mandated by legislation or otherwise, something that is desirable?

49. Vertical integration exists throughout the superannuation industry, with integrated business structures in both the retail and industry fund sectors. Vertically integrated structures also exist across the financial sector as a whole and have developed and evolved over a very long period. They are commonplace around the world.

50. AMP supports vertically integrated business structures of this nature and does not believe that these structures raise inherent problems for a superannuation trustee being able to comply with its fiduciary duties.

51. Accordingly, AMP does not support structural change of entities, mandated by legislation or otherwise.

52. We agree with both Treasury and ASIC that there are many benefits to customers of integrated models, including superannuation members, and that structural separation is not required, provided that there are appropriate controls in place to ensure that conflicts of interest are appropriately and effectively managed.

53. Treasury's view in its submission to the Royal Commission is that 'structural separation would also be complex and disruptive, and could have unintended consequences'.[11] Treasury agrees there are benefits of vertical integration and that recent or soon to be introduced reforms and other potential reforms that the Royal Commission could recommend, along with heightened attention by firms and ASIC, should be sufficient to mitigate risks involved.

54. Similarly, ASIC in its submission to the Royal Commission noted that there were benefits of 'vertical integration', as set out in ASIC's Report 562 - Financial advice: Vertically integrated institutions and conflicts of interest.[12] It believes that conflicts arising from a vertically integrated model need to be carefully managed to ensure best interest obligations are satisfied. ASIC reached the view that it should be possible for licensees to effectively manage the conflicts of interest associated with providing personal advice to clients and manufacturing financial products. ASIC concluded that it should not be necessary to enforce the separation of products and advice.[13]

55. It should be noted that structural changes would also introduce new (albeit different) costs into the system that would have to be borne by someone and a new set of risks that would need to be managed/mitigated.

56. As indicated above, customers including superannuation members, benefit from vertically integrated business models. For example, in our submission to the Royal Commission on 31 August 2018,[14] AMP outlined some of the benefits including that:

    (a) the structure gives the Trustees access to group-level resources, such as head office and legal and regulatory implementation functions, at no additional cost to members;

    (b) compared with Trustees that are at arm's length to the providers, these structures give the Trustees timely access to group executives, who are

[11] Treasury, *Submission on key policy issues,* 13 July 2018, paragraph 205

[12] ASIC, *Report 562 – Financial advice: Vertically integrated institutions and conflicts of interest*, 24 January 2018

[13] ASIC, *Submissions of the Australian Securities and Investments Commission Round 2: Financial Advice,* 7 May 2018, paragraph 137

[14] *AMP Group Submission Case Study 1: Duties of RSE Licensees*, 31 August 2018, paragraph 9

accountable through the group structure and not simply as third-party service providers;

(c) it provides access to a wider range of investment opportunities;

(d) it provides protection for members because the head entity of the integrated group, due to structural and reputational matters will typically have the incentive, resources and capacity to fix mistakes if and when they are made; and

(e) the outsourcing arrangements within the integrated group will typically contain indemnity provisions that mean the Trustees (and their members) are assured that any failings on the part of the outsource providers will be fully corrected and compensated.

57. While the management of the relationships between the entities involved in integrated models may create conflicts, these conflicts may equally arise between unrelated parties if they do not contract at arm's length to allow each party to discharge their respective duties or if the firm whose services are being acquired (e.g. a professional trustee company) is financially weak and/or independent in form rather than substance.

58. Appropriate governance controls can ensure that parties act in the best interests of their constituent members. For example, controls that include the independence of decision making, protections that allow trustees' discretion to be unfettered and the ability of the parties to negotiate arrangements in their commercial best interests can provide a framework that enables the appropriate management of conflicts of interest.

59. A significant factor in ensuring appropriate management of conflicts of interest is to ensure a competitive framework that enables choice for such entities.

60. AMP acknowledges that the effective implementation of these controls is critical and is reliant upon superannuation trustee boards attracting high calibre, experienced directors who understand and can effectively oversee the discharge of their obligations.

Questions 19 and 20

Would it be preferable to extend the obligation to act in the best interests of members of a superannuation fund so that:

- *contravention of the obligation attracts a civil penalty; and*
- *the obligation (and the civil penalty for breach) extends to shareholders of trustees and any related bodies corporate (within the meaning of the Corporations Act) of the trustee in respect of any conduct that will affect the interests of the members of the superannuation fund?*

Are there unforeseen consequences of such a legislative intervention that would make it undesirable to strengthen the SIS Act in this way?

61. AMP does not support additional obligations for shareholder entities or related bodies corporate of a superannuation trustee to exercise their powers in the best interests of members.

62. Clear governance models that enshrine the independence of decision making and ensure that trustees' discretions are unfettered are key to enabling regulated entities to discharge their obligations to act in the best interests of members.

63. AMP endorses an approach that would require trustees to ensure that in outsourcing or delegating their functions to any third party (including related parties), the trustees must ensure that those third parties discharge their obligations under those arrangements in accordance with the trustee's obligations at law.

64. However, AMP does not support an approach that would legislate that the SIS Act best interest duties be extended to shareholder entities or related bodies corporate in relation to any conduct that will affect the interests of members of the superannuation fund. This is because existing legislation includes sufficient sanctions to cover inappropriate activity and because this would create a number of unintended consequences, including:

    (a) the nature of the duties is founded on the principle of a trustee acting as a fiduciary – to require all parties to bear the same duty as a fiduciary would be a significant shift in legal principles;

(b) conflicts of interest for that contracting party as between its duties to its constituent members whether these are shareholders, or other policy holders (if an insurer); and

(c) confusion as to the order of priorities of duties where the party has other statutory obligations that they are required to discharge.

65. If a penalty regime were to apply, it should be evenly applied across the superannuation sector, excluding self-managed superannuation funds (SMSFs). The model adopted in the FFA, Part 4, Division 7 – Duties of Board members etc., contains appropriate trade-offs between penalties and relief in relation to care and diligence, good faith, use of position and reliance on information or advice provided by others.[15] Importantly, as is the case for the Future Fund, if such provisions were to apply, trustee directors should be able to obtain insurance funded by the trustee.[16] Provisions dealing with the use of position should be complemented with conflicts of interest provisions similar to those included in the FFA, Part 4, Division 8 – Conflict of interests.[17] If this approach were to be considered it would align the legal treatment of superannuation funds with Managed Investment Schemes and in some respects public companies.

66. AMP advocates for greater regulatory guidance about conduct, standards and protections that would demonstrate the performance of the duties to act in the best interests of members. These standards and protections could be demonstrated by requiring tangible evidence of member protections such as strategic and business planning evidencing the trustee's approach for delivering sound member outcomes and results of annual member outcomes assessments as required by the proposed Prudential Practice Guides SPG 221 *Strategic and Business Planning* and SPG 225 *Outcomes Assessment*.[18]

[15] FFA, Part 4, Division 7 – Duties of Board members etc.
[16] FFA, Part 4, Division 7 – Duties of Board members etc., s 67 – Insurance for certain liabilities of Board members
[17] FFA, Part 4, Division 8 – Conflict of interests
[18] APRA, *Draft Prudential Practice Guides SPG 221 Strategic and Business Planning* and *SPG 225 Outcomes Assessment*, December 2017

System Changes

Questions 21 and 22

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?

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?

67. AMP considers the link between the member outcomes test and misconduct is too tenuous to be meaningful. However, AMP supports the steps that APRA has taken to articulate its expectations in relation to the promotion of member interests as set out in the proposed amendments to SPS220 Risk Management and the draft new Prudential Standard SPS225 *Member Outcomes*[19] which are currently proposed to commence from 1 January 2019.

68. The prescriptive metrics-based approach for APRA's proposed Member Outcomes Test which will not only apply to MySuper but also Choice members, will ensure that superannuation trustees are appropriately measuring and assessing whether they are delivering quality member outcomes.

69. AMP is also supportive of APRA's Member Outcomes Test being added to APRA's existing MySuper authorisation process as an additional quality filter – to strengthen the process and improve the quality of participating MySuper products. AMP believes that APRA, which is the regulator responsible for the MySuper authorisation process, is also the most appropriate body to apply the Member Outcomes Test as part of that authorisation.

[19] APRA, *Revised Superannuation Prudential Standard SPS220 Risk Management* and new *Draft Superannuation Prudential Standard SPS225 Member Outcomes*, December 2017

Question 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 is a practical method of addressing this type of conduct noting that it is not suggested to be misconduct?

70. AMP does not believe that superannuation trustees intentionally inhibit the consolidation of multiple accounts.

71. There are many members who hold multiple accounts intentionally, for example for insurance purposes. The system must allow for this intentional strategy.

72. AMP is supportive of measures that enable customers to consolidate their superannuation accounts if it is in their best interests to do so based on their individual personal financial situation.

73. AMP also believes that the industry can improve the way it assesses intra-fund consolidation to ensure as many customers as possible gain from the benefits of fewer accounts, without disrupting valuable benefits already in place.

74. The concept of 'stapling' is similar to the Productivity Commission's recent draft recommendation in its Draft Report on the *Competitiveness and Efficiency of the Australian Superannuation System*,[20] to 'default only once' in relation to new entrants to the superannuation system, where they would take that initial default super account with them when they change jobs and avoid being given a second default when starting with a new employer.

75. Such a change would require detailed consultation with the industry, including the ATO, around new employee commencement processes including choice of fund processes. This would be critical to ensuring that new employees do not miss out on favourable default super arrangements (including discounted and tailored insurance and other benefits suited to that employer group) that may not otherwise be available to the individual.

[20] Productivity Commission, *Draft Report on the Competitiveness and Efficiency of the Australian Superannuation System*, 29 May 2018, draft recommendation 1

76. Any change to the default superannuation system that required a person to take their superannuation account with them when they changed jobs would require that 'choice of superannuation fund' be available for all Australians. This is not currently the case. AMP supports choice of superannuation fund for all Australians as proposed in the draft Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017.[21] This will reduce the likelihood of duplicate accounts and enable all Australians to take their superannuation account with them when they change jobs.

Question 24

Are there other system changes that might be appropriately tailored responses to misconduct or conduct falling below community standards and expectations of superannuation trustees? If so, what are the general parameters for such a system change?

77. AMP supports the government's draft Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018[22] which has been recently introduced into Parliament and includes Product Intervention Powers proposed for ASIC. These measures will provide greater transparency and improved outcomes for members.

78. AMP is also supportive of further consultation with the industry on additional powers for APRA as proposed in the draft Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017[23] which will enable APRA to cancel a MySuper licence and have a directions power to protect the interests of beneficiaries.

[21] Draft legislation – Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017, introduced into the House of Representatives on 14 September 2017, currently before the Senate

[22] Draft legislation – Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018, introduced into the House of Representatives on 20 September 2018

[23] Draft legislation – Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017, introduced into the Senate on 14 September 2017

Deterrence and insight

Questions 25, 26 and 27

What can be done to encourage the regulators to act promptly on misconduct or potential misconduct?

Is the present allocation of regulatory roles appropriate to achieve specific and general deterrence from misconduct?

Given that what we are fundamentally concerned with is conduct that in subtle but ongoing ways negatively affects the retirement outcomes of consumers, are either of the regulators best placed to carry the responsibility to protect consumers should the balance between them be restructured or significantly altered?

79. AMP supports the need for strong and well-resourced regulators with oversight of the financial services sector. Additional resourcing may go some way to enable ASIC to act more promptly, but care needs to be taken, given that ASIC is industry funded, to ensure that due process and due accountability is embedded in any new regulatory structures or procedures.

80. AMP does not support the establishment of a new regulator for superannuation as this may lead to more uncertainty and confusion.

81. The current twin peaks regulatory structure (APRA and ASIC) was created following the Wallis Inquiry in 1997.

82. Wallis' vision was for clearly defined regulatory responsibilities for each regulator:

    (a) APRA for prudential regulation;

    (b) ASIC for market conduct and consumer protection; and

    (c) the ATO for tax and specific issues such as SMSFs.

83. At the time there were well defined roles for each of the regulatory bodies, but over time their roles and responsibilities have blurred. This needs to be rectified.

84. A number of changes could be considered which would assist the government, the regulators and financial services entities in fulfilling their responsibilities including:

    (a) The establishment of a mechanism for the government to hold the regulators accountable for their overall performance. The Financial System Inquiry

proposed the establishment of the Financial Regulator Assessment Board (**FRAB**) to assess the performance of the regulators against their mandates. This reform was not adopted but should now be reconsidered.

(b) The FRAB could provide advice to government, based on the FRAB's assessment of the regulators performance, on how best to nuance or rebalance the regulators' portfolio responsibilities.

(c) There is a need for greater clarity in regulatory guidance and the definition of terms; this would assist the industry with more consistent interpretation of the terminology. A good example would be a definition of 'community expectations'.

85. Finally, there is an inherent conflict of interest in relation to ASIC receiving the fines directly or indirectly that they impose on the financial services sector. Consideration should also be given to the approach adopted by the Financial Conduct Authority (FCA) in the UK towards penalties and fines which adopts a proportionality approach which ensures that fines reflect the extent of the damage and act as a deterrent.