



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

Submission on policy issues raised in Round 5

Due date: By 5pm on Friday 21 September 2018.

*MANDATORY FIELDS

QUESTIONS ABOUT YOU	
1	What is your name?*
2	What is your email address?*
3	What is your preferred contact phone number during business hours?*
4	Who are you making this submission for?*
	<input checked="" type="checkbox"/> Myself <input type="checkbox"/> Other (individual, business or organisation)
4.1	If you have selected 'Other' in Question 4, provide the name of the individual, business or organisation.
5	Do you agree to your submission being published?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<small>Note: personal information other than full name (such as an address and contact details) will not be published by the Commission.</small>
5.1	If you have selected 'Yes' in Question 5, do you agree to your full name being published alongside your submission?
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No – Name withheld
	<small>If you agree to the Commission publishing your submission, but wish to have your name withheld, the Commission may publish the submission under "Name withheld".</small>

PUBLICATION OF SUBMISSIONS

The Commission reserves the right not to publish submissions or may decide to redact information within a submission. This includes circumstances where the information is not relevant to the policy issues raised in Round 5, where matters are subject to a nonpublication order, or where there are privacy concerns about the information included.

To assist the Commission, your submission should not include personal financial information, or information that identifies the personal details of third parties who may not agree to their name being published.

DUE DATE

All submissions are to be received by 5pm on Friday 21 September 2018.

To assist the Commission in considering all submissions received, please be as concise as possible, provide your submission in **one document only** and with a page limit of **no more than 50 pages**. Additional attachments will not be accepted and will be returned.

If sending via e-mail: Upload one document in either of the following formats: .DOC, .DOCX, .PDF ensuring that the file size does not exceed 5MB and send to FSRCenquiries@royalcommission.gov.au.

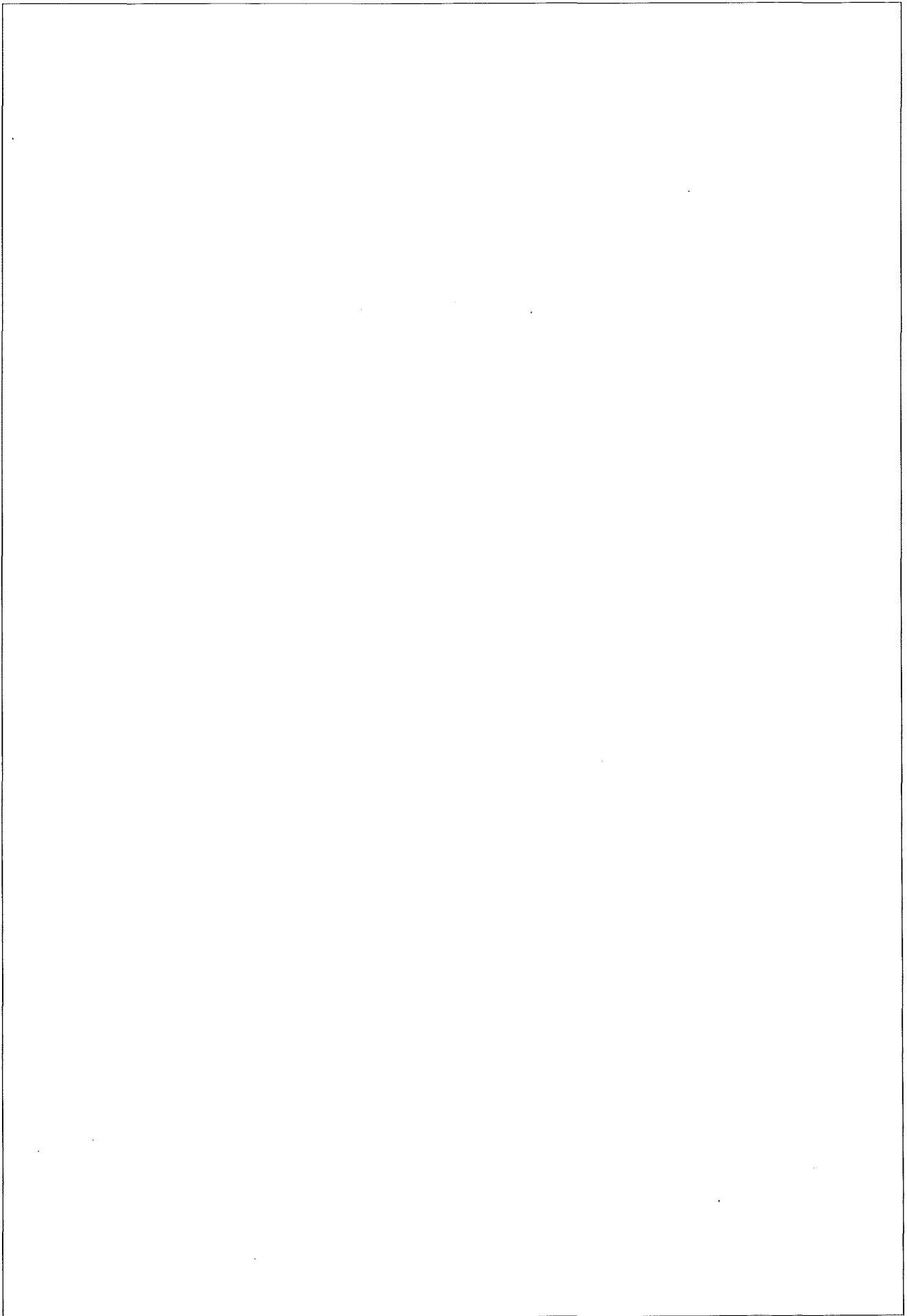
If sending via post: Send to PO Box 5446 Kingston ACT 2604.

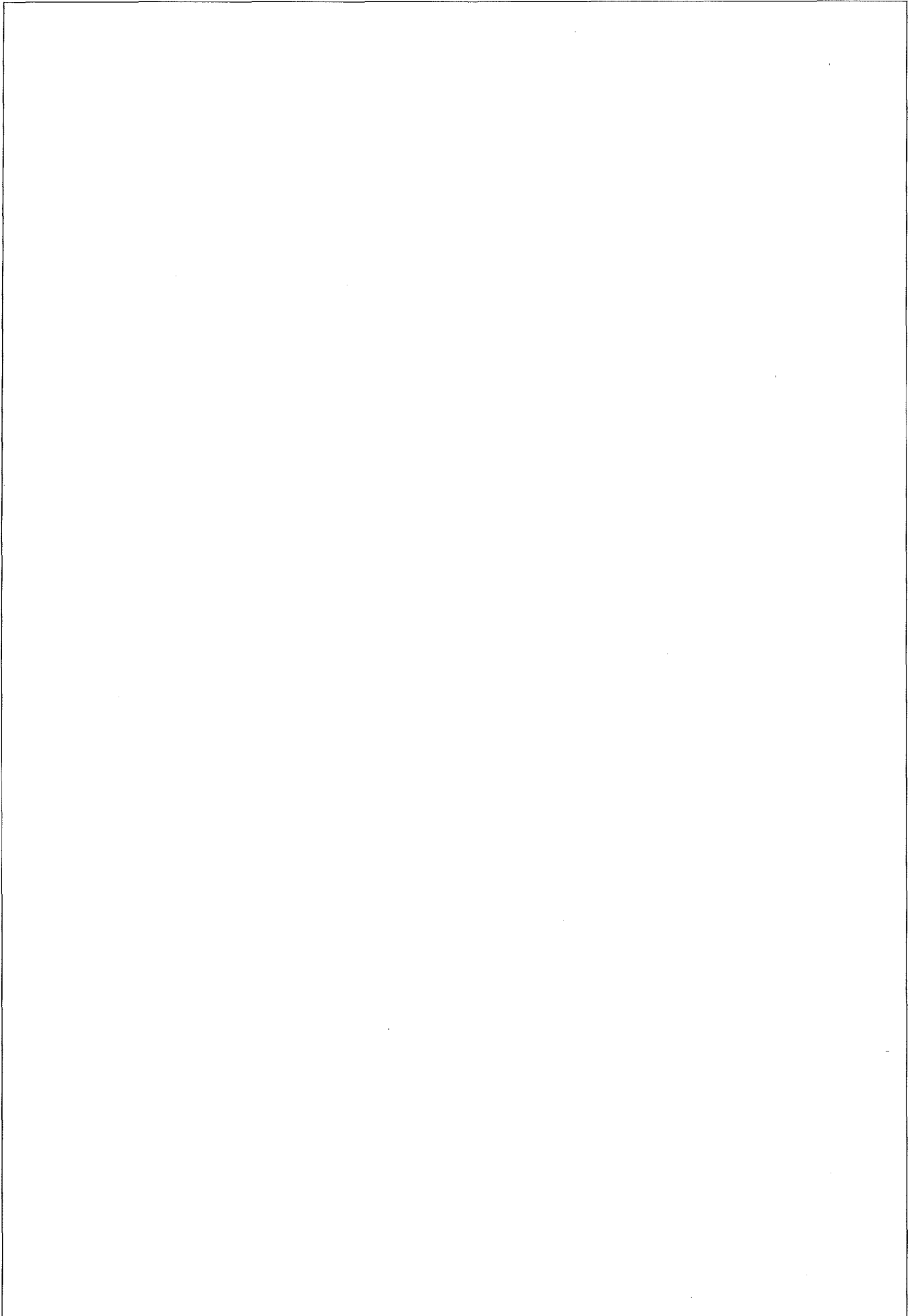
If you require further assistance, please phone the Commission on 1800 909 826

If you require further space to the below, please add additional pages. (maximum 50 pages).

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Mr Kenneth Hayne
 Royal Commissioner
 Royal Commission Financial Services
 Care of Parliament House Canberra
 Australia

Dear Sir

I wish make a submission to your enquiry into The Superannuation Industry. My hope is the information which I present will be considered of value to the enquiry and be useful as reference material for when you finally write up your comprehensive report on the findings of your Royal Commission into this industry.

I have had an experience resulting in what appears to be inconsistent procedures of a Superannuation Fund Trustee's questionable actions relating to the operation of a Fund account and the interpretation process's for distribution of funds via Superannuation Law and the Master Trust under which they operate. I am concerned that if the situations I present are not corrected many more people will be severely effected in the future. It appears that some industry Trustees in charge of Members savings may not be acting in the best interests of their Members.

Please note that under Superannuation Industry Supervision Regulations SIS a member can also be considered to be a person or entity who has a legitimate claim to a deceased members funds. I wish to categorically state my understanding of Super Law is very minimal the information which I am providing is not in anyway to be construed as an action of accusing any person or company of impropriety or compliancy or of any other wrong doing what so ever. My intentions are to provide an outline of events, highlight the problems I have experienced within the Superannuation system and provide suggestions to prevent certain actions occurring that are not in the best interests of a Member.

The Event Time Frames

My Father Inlaw passed away on 30/12/2015 at that time he was married with a Wife and had four nondependent children. He held superannuation pension and investment accounts with a Super Fund identity. His Wife was the full beneficiary of his Will and the Binding Death Benefit (BDB) nominee for all of his Superannuation funds.

The Fund Manager was notified by family representative of his passing and the appointed Legal Personal Representative (LPR) of his estate also informed the Super Fund and requested that all correspondence was to be addressed to them.

A Binding Death Benefit (BDB) nominated his wife as the sole beneficiary of his Superannuation and Investment funds these accounts were to be included in his estate.

With no consultation with the Wife or her LPR the fund manager issued her with a super fund membership number this resulted in her being given a Revisionary Pension Benefit (RPB) option for the pension account this action was not communicated to Her or the LPR of the estate. It was considered by the Wife that in providing her with a membership number, would enable the rollover of the actual pension and investment accounts into her name, in order to comply with the BDB.

My Mother Inlaw, Wife of the deceased husband then passed away on 20/04/2017 this being 16 months after the passing of her husband.

Upon her passing she had four nondependent children her Will stated that all of her assets were to be proportionately distributed to all four children. She did not have a BDB.

The Super Fund manager was informed by the family representative and also by the LPR who are were administrators of the estate. The LPR requested that all accounts be closed and funds transferred to the estate.

Then the Eldest Daughter my wife who was one of the 4 Children passed away on 16/11/17 this was 8 months after the passing of her mother. The appointed LPR administrators of her estate stated that as she survived the required 30 days as per inheritance requirements for fund distribution from her mothers estate It was considered that she had a legitimate claim to a proportion of the super funds that were held by her mother. The Super Fund were informed that there were beneficiaries of the mothers estate assets.

Conduct of Fund Operatives

On the 3/04/18 correspondence was received from the Fund it indicated that the deceased husband's pension account was still being operated in his name. He had been deceased for 28 months. This date was also 12 months after the passing of his wife and 7 months after the passing of her daughter. Previous correspondence by the LPR requesting the accounts be transferred to his wife appear to have been ignored. The Pension Fund Payments only were being periodically transferred via his wife's new fund membership number into her bank account. This action of continuing to operate an account in the name of a deceased person (the Husband) appears not to be in compliance with information from the Australian Taxation Office relating to Tax Law requirements. A Pension Account is a member account kept for the pension member. The Fund was challenged by Family Representative and also the LPR to explain the grossly unreasonable time frames involved in closing this account, why was it still operating in Husband's name 28 months after he became deceased, why when previously informed by the LPR upon the Husband's Wife becoming deceased the accounts had not been closed and funds transferred to her Estate as originally requested.

The Fund then finally proceeded a month later to close the account. They did not provide any explanation and with no consultation undertook to close the pension account using "The Sole Benefits Test" to determine how the funds should be distributed based on Superannuation Industry Supervision Act (SIS) and the Master Trust under which they operate. The Fund claimed they did not know of or had not been contacted by any LPR. This was totally incorrect as the LPR had sent correspondence to them previously. The Trustee determined that as the eldest daughter was now deceased she was no longer a dependent therefore not considered to be eligible to claim any of this Super fund assets.

This was based on the trustee's interpretation of who is considered to be a "Dependent" at time of making a decision. Trustee stated funds were to be distributed in third proportions to the three surviving nondependent family members.

This decision seems to be grossly unreasonable as it did not take into account the (SIS) Act section 62 (1) a, regulations - 6.21, 6.22, schedule one "Trustee must pay any death benefits as soon as practicable after a member's death". Part 6.22 states "The payment of death benefits may be made to members dependents and or legal personal representative or combination of both." Within the (SIS) description of a Member, section 62, regulation 1.03, 13.18 it states that a person or entity who has a rightful claim to the funds within a super account shall have the same Member rights as the original Member. Therefore if this recognised person becomes deceased, then it is their Dependents who should be considered as the rightful Member inheritors of any portion of the fund, for final distribution under Super Law.

Alternatively these funds may pass to the deceased's LPR who is considered to have the same Member rights as the entity who is acting on behalf of the recognised dependent. The deceased daughter's rights, as a recognised member and her LPR, per SIS Regulations section 62 were severely comprised due to a narrow interpretation of legislation by Fund Trustee

This inconsistency was caused by the Fund Trustee not acting appropriately in closing the account within a reasonable period of time as per Section 62 (1) a. If acted upon responsibly it would have occurred prior to the passing of the eldest daughter with the funds being distributed in quarter allotments to all four children. The Funds comment also was that within their decision making process they could not be seen to be favouring one or more of the adult children over another. This point of view could also be construed to say that the Trustee has actually caused the favouring of the 3 surviving adult children over the now deceased fourth adult child by not undertaking to close account and distribute within a Reasonable Period of Time. It actually took the Trustee a very unreasonable 13 months to close account after the mother became deceased and 8 months after the daughter had passed.

Contribution to Conduct

The above problems caused by there not being a specific regulated time period to close an account for distribution. It is not unreasonable to think a Reasonable Period of Time would not represent extensive months to complete account closure and fund distribution, either via the LPR or by Super Legislation or some combination of above.

If an Original Account Holder becomes deceased and a person survives the required 30 days to become a beneficiary to the Estate they should be included in any eventual super account fund distribution if a Dependent. Then if this recognised Inheriting Beneficiary becomes deceased prior to super distribution then their actual Dependents or the LPR should have same rights to that fund distribution. There appears to be an arrogant culture by some industry operatives in that they are above acting on directions of a deceased members Will or that the LPR should have any role in receipt or distribution of the super funds.

Steps taken to Complain

An objection was lodged with Superannuation Complaints Tribunal (SCT) and the Fund regarding the unreasonable decision making process. It appears that upon consultation between the above two parties it was decided to remain with the decision to only distribute to the 3 surviving nondependent family members.

Whilst I am not privy to the information provided to SCT one could be forgiven for assuming that there was possibly a very abridged version of events presented being based solely on what may be considered to be a very narrow outline and application of referable laws by the Fund Trustee. In this case the SCT may not have been provided with referable back ground information or considered the wider description of who is a member and what rights those identities have or be aware or taken into account the extensive unreasonable time frames involved in closing the account or the history relating to the operation of the account in the name of a deceased person. This resulted in the deceased Daughter and her LPR unreasonably being deemed to not be a claimant to a proportion of funds in the account.

Following the above decision not being considered satisfactory further objections by our Family Representative and the LPR have been lodged with SCT no decision has as yet been provided

Suggestions to review Super Legislation that would also effect MasterTrust Documents

1— Better supervision by appropriate legislative authorities relating to how Super fund companies conduct their back ground business must be implemented. Prevention of continuance of operating accounts in name of deceased, accounts must be transferred promptly into surviving recipients names, Implement reasonable time frames to close accounts and distribute funds. Ensure that member rights and that of the broader determination of member rights as in any person or entity having a claim to a Super Fund asset be better recognised and enhanced. If a recognised inheriting dependent becomes deceased prior to fund distribution, their children, who are dependents, are severely disaffected persons, not being considered for fund distribution deprived of member rights. The children of the inheriting dependent are the grandchildren of the deceased person who was the owner of the super account. In many cases grandchildren are included in a Will distribution if a child of the parents has become deceased then that portion generally passes onto those grandchildren. Due to people living longer actual description of Dependent should include three family generations, children, grand children, great grand children

2— Open time frames allow Trustee manipulation of processes this is not in best interest of the member request, could result in unnecessary management fees. If a time frame can be legislated 3 months maximum may be considered as reasonable to close account and distribute funds. When an Account Holding Member becomes deceased and a recognised Inheriting Dependent survives the required 30 days legally qualifying them as a Beneficiary in an Estate this should also include Super funds. If they pass away before super fund distribution occurs their share of funds must be transferred to their LPR for inclusion in their estate or distributed to their dependents. Within Super legislation the objective of financial support for a member or their dependents should be used to provide for the support of the Dependents of the now Deceased Beneficiary.

2—These Dependents should have a cascading claim to the proportion of funds that were to be allocated, not as presently occurring where if the Inheriting Person becomes deceased they are disregarded, brushed aside by a stroke of a trustees pen and their immediate family members dependent children are deprived of funds that can be used for their benefit.

It has been observed there are constantly clauses that are worded in such away that allow trustees to ignore specific directions this has to be changed. It should be the member who decides whether to hold over account or to proceed to liquidation to receive their entitlement. This situation becomes even more critical as value of super accounts grow considerably and a disaffected group who should be considered as eligible dependents are deprived of supporting funds.

3—Super funds must be made to outline more clearly the implications of what happens with member funds upon their death. Members must be informed that their funds actually do not get included in their estate and that their Will has no power in deciding how funds will be distributed. Members must be clearly informed that Trustees make the decisions on who receives their funds and also how to put measures in place to ensure that their funds are distributed in accordance to their wishes eg a correctly worded BDB for funds to go to LPR. Supremacy of the Will expressing a person's wishes should be respected. Why should a Super Fund Trustee have the power to completely disregard a persons wishes as expressed in their last Will and Testament as most members see their funds in a Super Account as being part of their assets, expecting that these funds would pass to their LPR for distribution as per their directions. The problem is caused by the way the Super legislation is written. If there is a BDB then the Trustee must act in accordance with those instructions. Trustee should have to communicate with LPR to ascertain member wishes via the Will, arrange for funds transfer to LPR or distribute by super legislation via an enhanced recognition of member rights and dependent description. This whole problem is due to Super Law allowing Superannuation Funds to lie outside of an Estate.

Comment regarding Reasonable Time Frame to close Accounts

It is worth noting here when you look at a particular situation described in this Funds Master Trust there is a section which outlines that if a Trustee decides to close a whole operational investment fund this must be completed and all monies returned to the members within 180 days. Such a fund being terminated could conceivably have a considerable membership numbers and would have a broad investment structure representing extensive sums of money.

So why is it that it takes so long to make a decision to wind up a single individual account within an investment fund, termination should occur in a much less time frame than the above example. A perusal of their Master trust and Superannuation Law unfortunately indicates the previous point of view that there is no actual time frame for a deceased member account to be closed and monies distributed. The statement to close account "as soon as practicable after Death" or or as stated else where within a "reasonable period of time" is grossly unreasonable and a members rights are being ignored within legislation by not having accounts closed promptly.

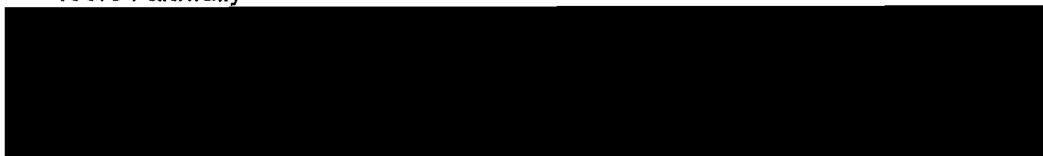
I know and understand that your Commission will only present recommendations and is not there to direct any person or entity. I trust that my contribution as a concerned lay person to your enquiry shall be noted and considered as relevant to the issues that you are investigating. The problems which I have raised hopefully can be useful for reference when you finally present the findings and recommendations of your Commission.

I am available to provide further information if requested.

I request that you refrain from including my name and contact details if you wish to publish any of this document.

I would be pleased if you could also acknowledge the receipt of this letter via email thank you

Yours Faithfully



Signed and dated on this day the 21st of September 2018

