

COMMONWEALTH OF AUSTRALIA

Royal Commissions Act 1902

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

HOST-PLUS PTY LTD'S RESPONSE TO THE SUBMISSIONS OF COUNSEL ASSISTING
DATED 24 AUGUST 2018

A. Introduction

1 Counsel Assisting has submitted that it is open to the Commission to find that Host-Plus Pty Ltd (**Hostplus**) engaged in two types of conduct that fell below community standards and expectations:

(a) sending letters to inactive low balance members that gave the false impression that the members would “lose” their superannuation balance to the Australian Taxation Office (**ATO**) (**First Conduct Issue**);¹ and

(b) not acting in a way that satisfactorily took into account members' circumstances when engaging in retention strategies to keep members in the fund (**Second Conduct Issue**).²

2 The matters relied on to support the First Conduct Issue are set out in [299]-[306] of Counsel Assisting's submissions and the matters said to support the Second Conduct Issue are set out in [307]-[311] of those submissions.

3 For the reasons set out below, Hostplus respectfully submits that the evidence does not support a finding that its conduct fell below community standards and expectations.

B. Letters to inactive low balance members

4 The letters that Counsel Assisting submits may have given the false impression that members would “lose” their account balances to the ATO are referred to at [302] and [303] of Counsel Assisting's submissions.

5 Counsel Assisting has not explained how or why the letters might give that impression. In Hostplus' respectful submission, they do not. The letter referred to at [302] simply says that “[y]our account has been identified as at risk of becoming inactive and under

¹ Counsel Assisting submission at [323].

² Counsel Assisting submission at [325].

current legislation we are required to transfer inactive accounts to the ATO". The letter referred to at [303] was similar.

6 Stating that a member's superannuation may be "transferred" to the ATO does not mean (or imply) that the member would be unable to recover that superannuation from the ATO.

7 The letter referred to at [302] goes on to make clear that the ATO would retain the member's superannuation for the benefit of that member. It says:

*"[p]lease note if your money is transferred to the ATO your super may not experience the same level of investment return as it would with HOSTPLUS."*³

8 Rather than give the impression that the member would "lose" their money to the ATO, this suggests that the member would enjoy a *return* on any money transferred to the ATO (although perhaps a lower return than if the money was held with Hostplus).

9 The confusion that Counsel Assisting suggests might arise from the letters is also inherently improbable. It would require the reader to assume that the Commonwealth Government was effectively seizing the superannuation of any person that had a low account balance. It is difficult to see how any reader – regardless of their age or sophistication – would consider that to be a realistic prospect.

10 There is also no evidence that any Hostplus member was in fact confused or misled by these letters. Counsel Assisting notes that a number of members elected to remain with Hostplus following receipt of the letters, including 1% of respondents to the letter whose account balances have since reduced to \$0.⁴ But there is nothing to suggest that this occurrence involving 180 members was a result of any confusion or misunderstanding. Those members may have chosen to remain with Hostplus for their own good reasons. As Mr Elia explained, it is not uncommon for members to "park" money in a Hostplus account solely for the purpose of taking advantage of the fund's low cost insurance.⁵

11 For example, the member whose statement Counsel Assisting refers to at [310] has a low account balance but 8 units of Death and TPD insurance coverage. That is more than the default amount for his age.⁶ This suggests that the member may have made a positive decision to keep his funds with Hostplus for the purpose of that insurance coverage. Many members with low account balances may have made a similar informed

³ Exhibit 5.175.

⁴ See Counsel Assisting Submissions at [304].

⁵ T4863.2-9.

⁶ See Exhibit 5.177.

choice. Of the approximately 1,400 members that made an insurance claim in the 12 months to 30 June 2018, 158 or over 10% of claimants had account balances less than \$1,000.⁷

12 Further, the letters were written by Hostplus to elicit a response from and initiate communications with members to enable Hostplus to educate them in relation to the regulations dealing with transfers of balances to the ATO and to update their details so that the fund could increase their capacity to engage members in the future.

13 At [305] Counsel Assisting submits that Mr Elia accepted that the letters could be misunderstood by readers. That is an unfair characterisation of Mr Elia's evidence. At T4853.3 Mr Elia expressly rejected the proposition that the letters were "potentially misleading". He candidly acknowledged that these communications could and should be improved, but that does not suggest that they were misleading in any way.

14 Notably, Hostplus has also put in place a program of works to ensure any elections members have made not to have their account balance transferred to the ATO are in their interest.⁸

C. Keeping inactive, low balance members in the fund

15 The Second Conduct Issue is that Hostplus did not act in a way that satisfactorily took into account relevant members' circumstances when engaging in retention strategies.⁹

16 As explained above, Hostplus understands that this submission is based on the matters referred to in [299]-[306] of Counsel Assisting's submissions; in particular, the fact that Hostplus' administration reserve accrues a tax benefit equal to 15% of members' insurance premiums.¹⁰

17 The fact that Hostplus' administration reserve accrues a tax benefit from members' insurance premiums does not support a finding that Hostplus failed to act in a way that satisfactorily took into account members' circumstances when engaging in retention strategies. There is no evidence that Hostplus has sought to keep low balance members in the fund or engaged in any retention strategy for the purpose of obtaining that tax benefit. There is no evidence that Hostplus has even considered seeking to retain members due to the tax benefit that their insurance premiums provide.

⁷ T4853.13-16.

⁸ T4856.20-25.

⁹ Counsel Assisting's submission at [325].

¹⁰ See [307]-[311]. If the Commission considers relying on any other matters to support such a finding, Hostplus respectfully requests the opportunity to make submissions in respect of those matters.

- 18 Hostplus' assessment of the likely impact on the fund from the implementation of the Insurance in Superannuation Voluntary Code of Practice (**Code**) referred to at [309] of Counsel Assisting's submissions was a prudent assessment undertaken as part of the administration of the fund. Further, the assessment referred to in the CEO Report to Board Meeting (Exhibit 5.176 at HOS.0037.0001.0710) was undertaken in relation to the likely impact of proposed budget changes in response to an inquiry from APRA. There is no evidence that either of the assessments were a factor in Hostplus' decision to apply the Code or its retention strategies. Indeed, the Board of Hostplus resolved on 23 March 2018 to adopt the Code.¹¹ Hostplus presently intends to comply with the Code from 1 July 2019.
- 19 The evidence demonstrates that Hostplus' insurance products are designed to ensure that members receive appropriate insurance cover based on their personal circumstances, not to procure a tax benefit. For example:
- (a) in 2015 Hostplus significantly altered the structure of its insurance products so that they better suited young members' needs.¹² As a result, members under 16 years of age receive death-only cover for about \$12 per year¹³ and members between 16 and 19 years of age receive death and TPD cover for about \$52 per year;¹⁴ and
 - (b) in March 2018, Hostplus' Board approved a further amendment to its insurance products that will require members under 19 years of age to "opt-in" to receive insurance. It did so because it considers that those members have the least need for insurance and the measure would assist in preserving their account balances.¹⁵
- 20 Hostplus has one of the lowest cost insurance offerings of any fund, particularly for younger demographics,¹⁶ and over the past six to seven years its premiums have declined.¹⁷

¹¹ The Board of Hostplus approved the adopting of the Insurance in Superannuation Code of Practice subject to extending the period of no contributions being received for account balances of \$6,000 or less to 24 months before automatic cover ceases.

¹² T4855.12-13.

¹³ T4854.38-39.

¹⁴ T4854.41-43.

¹⁵ See witness statement of David Elia dated 1 August 2018 at [37]. As noted in footnote 2 of that statement (on p. 10), implementation of this change has been delayed until the changes to insurance in superannuation in the recent federal budget are introduced.

¹⁶ T4864.10-11.

¹⁷ T4855.9-13.

- 21 Finally, to the extent that Hostplus obtains a tax benefit from insurance premiums, that benefit accrues to the members as a whole. Hostplus is an “all profits to member” superannuation fund.

31 August 2018