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## BANKING ROYAL COMMISSION: IMPACT ON SUPER

Since its release, commentary on the Royal Commission's Final Report has focused on the impact this will have on the Australian financial services sector and the big banks.

**However, with the Treasurer confirming that the Government will take action against all the recommendations made in the 496 page report, the potential shake up to the superannuation sector, its members, Trustees and Executive Managers appears to be just as significant.**

To assist in navigating through, and planning for the impact of these recommendations, our team of financial services assurance specialists has summarised **5 key areas which will be impacted.**

### 1. NOMINATION OF A FUND

#### **Recommendation 3.5**

*A person should have only one default account. To that end, machinery should be developed for 'stapling' a person to a single default account.*

Commissioner Hayne believes that as some employees, especially those who are young and working part-time, do not make informed choices about their superannuation, default arrangements are essential with the potential growth in unnecessary accounts not being in the interest of superannuation members.

Consistent with the findings from the Productivity Commission, the report recommends that default superannuation accounts should only be created for new workers, or workers who do not already have a superannuation account and that default account should then

be carried over, or 'stapled', to members as they move jobs.


#### **Recommendation 3.6**

*The Superannuation Industry Supervision Act 1993 (SIS Act) should be amended to prohibit trustees of a regulated superannuation fund, and associates of a trustee, from doing any act which may influence the recipient in nominating a default fund or have their employees apply or agree to become members of the fund.*

Questions were also raised as to the effectiveness of the SIS Act in preventing funds 'treating' employers to gain members. This was based on the Commission finding that "not insignificant amounts" were spent on entertainment and sporting events to maintain or establish good relationships with those who will be responsible for nominating the default fund for their employees.

As a result, amendments to the SIS Act have been recommended to prohibit trustees of a regulated superannuation fund, and associates of a trustee, doing any of the acts specified in section 68A(1)(a), (b) or (c) where the act may reasonably be understood by the recipient to have a substantial purpose of having the recipient nominate the fund as a default fund or having one or more employees of the recipient apply or agree to become members of the fund.

The SIS Act was found to be further limited by the fact that the only consequence of a breach is that a person



who suffers loss or damage because of the contravention may bring an action against the offender. As a result, the recommendation has been made that contravention of Act should be a civil penalty provision enforceable by the Australian Securities and Investments Commission (ASIC).

## 2. HAWKING

### Recommendation 3.4

*Hawking of superannuation products should be prohibited.*

As a direct statement to the financial services sector, the report states that "superannuation is not a product to be sold". This is based on the view that the persons to whom unsolicited offers might be made will very often not be able to judge the merit of what is being offered, or able to compare this to what they already have.

Sighting the potentially illegal attempts by the Australia and New Zealand Banking Group (ANZ) and the Commonwealth Bank of Australia (CBA) to sell superannuation in bank branches under a 'general advice' model, the Commission recommends that any actions undertaken to induce persons to hold multiple accounts should be actively discouraged and that those who have existing arrangements should not be induced to change them unless there is good reason.

These prohibitions should not prevent trustees or related entities advertising generally the availability of the fund. Similarly, while common banking products such as transaction accounts and credit card accounts may be considered as one type of product, superannuation products are, and should be treated as, distinct product types.

## 3. THE ROLE OF THE TRUSTEE

### Recommendation 3.1

*The trustee of a registrable superannuation entity (RSE) should be prohibited from assuming any obligations other than those arising from, or in the course of its performance of, the duties of a trustee of a superannuation fund.*

Superannuation trustees are responsible for the compulsory and voluntary retirement savings of millions of working Australians. This responsibility comes with important obligations to act in the best interests of members and to give priority to the interests of members above all others.

After being made aware of situations where trustees were not only acting as a trustee, but also had a role with the fund's parent company, the Commission formed a view that the moment a trustee tries to wear two hats, conflicts will arise. The duties the trustee owes to members of the superannuation fund are not the same as the duties it will owe as responsible entity of a managed investment scheme and the duties will be owed to two different classes of members.

The proposed solution is to prevent a trustee of an RSE from acting as a dual-regulated entity is to prevent them from assuming any obligations other than those arising from, or in the course of, their performance of the duties of a trustee.

This recommendation is not designed to preclude an RSE licensee from being the trustee of more than one superannuation fund.



In addition to this recommendation, the new Banking Executive Accountability Regime (BEAR) is expected to be extended to trustees and fund executives of large super funds. This will enable regulators to control bonuses, validate appointments and force Boards to document Executive responsibilities.

#### 4. LIMITING ADVICE FEES

##### **Recommendation 3.2 and 3.3**

*Deduction of any advice fee (other than for intra-fund advice) from superannuation accounts should be prohibited unless it is from a non MySuper account and specific requirements are met.*

One of the key elements that the Commission believed contributed to the charging of fees for no service was the invisibility of the charges made. In almost every case the fees were charged directly to the person's investment accounts, often enough to the person's superannuation account.

Given the limited nature of the advice that may be paid for from a superannuation account, the Commission believe that it might be thought that there are few circumstances in which paying fees for ongoing advice of that kind would be in the best interests of a member.

Should ongoing advice fees continue to be permitted, it is recommended that they should be tightly controlled in at least two ways:

- Advice in respect of which fees may be charged is limited to advice about superannuation investments; and
- Any such ongoing advice arrangements should require annual renewal.

The above specifically excludes 'intra-fund advice', being the provision of advice that is not personal advice, to members of a fund about their interest in that fund, where the cost of the advice is charged collectively to members of the fund in accordance with the SIS Act.

#### 5. NO NEW REGULATOR

##### **Recommendation 3.8**

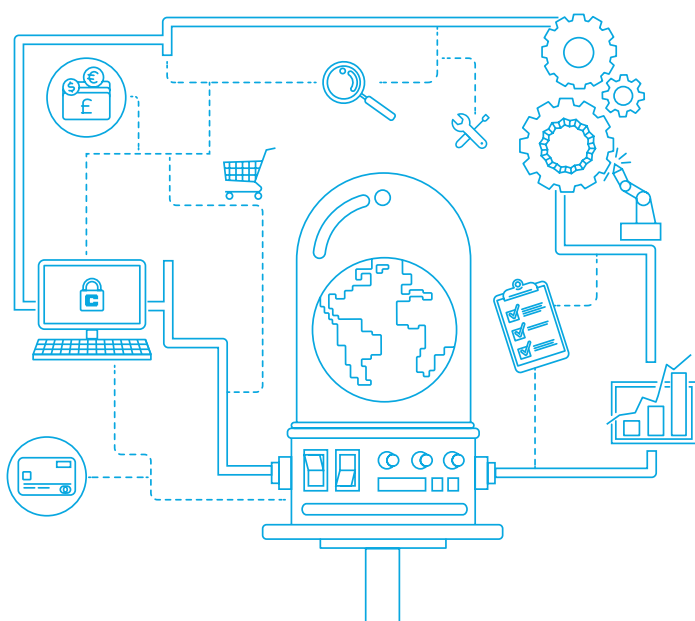
*The roles of APRA and ASIC with respect to superannuation should be adjusted.*

Within the report, the Commissioner proposes that a response to doubts or difficulties about the respective roles of the Australian Prudential Regulatory Authority (APRA) and ASIC in relation to superannuation could be to create a new and separate regulator.

The recommendation however, implies that as the superannuation industry has so many intersections with other parts of the financial services industry, the creation of a new and separate regulatory authority is likely to create more problems than it would solve.

Reference was also made to the submission by Treasury which noted that a new regulator would have to deal with prudential and conduct issues and would almost certainly take its initial cohort of staff from APRA and ASIC, thereby diminishing their resources.

As such, the report favours that the roles of APRA and ASIC in relation to superannuation should be adjusted to address the findings.



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