



3 December 2021

Committee Secretary
House of Representatives Standing Committee on Indigenous Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

Re: How the corporate sector establishes models of best practice to foster better engagement with Aboriginal and Torres Strait Islander consumers

About AIST

Australian Institute of Superannuation Trustees (“AIST”) is a national not-for-profit organization whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds.

As the principal advocate and peak representative body for the \$1.5 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

AIST welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Indigenous Affairs consultation into how the corporate sector establishes models of best practice to foster better engagement with Aboriginal and Torres Strait Islander consumers.

Summary

AIST has a keen interest in improving the superannuation outcomes for Indigenous peoples. The superannuation industry established the Indigenous Super Working Group (ISWG), a cross-industry initiative that seeks to improve superannuation outcomes for Aboriginal and Torres Strait Islander peoples, chaired by AIST since 2013.

The ISWG includes superannuation industry bodies, superannuation funds, service providers, and representation from First Nations Foundation. Through the Working Group, AIST and

superannuation funds have sought to advance important enhancements in the sector to better meet the needs of Aboriginal and Torres Strait Islander peoples.

This submission addresses Terms of Reference 1 and 4.

1. The way the corporate sector supports meaningful engagement with Indigenous consumers

Superannuation

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Sector ('**FSRC**') highlighted the difficulties Aboriginal and Torres Strait Islander peoples face in accessing and making effective use of some aspects of the superannuation system, in particular with "identification and about binding death nominations".¹

In relation to funds who participate in the ISWG, which include major industry, corporate, and public sector funds, a large majority have adopted processes that implement guidance by the Australian Transaction Reports and Analysis Centre (AUSTRAC). A survey in June 2021 by AIST of ISWG participants highlighted that around 88% of respondents had updated processes and training materials to include AUSTRAC guidance.

In 2019 the ISWG held the Indigenous Super Summit, an opportunity for ISWG members to hear the perspective of Indigenous members and financial counsellors. Delegates at the Summit included ISWG members, the ATO, ASIC, and First Nations Foundation. The summit was also an opportunity for delegates to commit to several actions that would enhance "greater collaboration between funds and service providers"².

On enhanced engagement with financial counsellors, AIST acknowledges that further efforts across the industry could and should be done. In the June 2021 survey, results indicated the use of, and partnering with, financial counsellors whose clients are largely of Indigenous background was less common across respondents compared to the adoption of AUSTRAC guidance. This is due to the COVID-19 pandemic curbing the ability of funds, service providers, and key stakeholders to engage directly with remote and very remote communities.

¹ Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Sector, *Final Report* (2019) vol 1, 253.

² Indigenous Super Working Group, *Indigenous Super Summit 2019*, 17.
<https://www.aist.asn.au/CMSPages/GetFile.aspx?GUID=77deb8be-d6b6-41b9-a950-79381651f77a>.

Nevertheless, further engagement with financial counsellors and direct engagement with Indigenous communities remain key action items for ISWG members.

Insurance and Claims

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The FSRC also identified binding death benefit nominations as a potential issue impacting Aboriginal and Torres Strait Islander peoples. This issue arises from a lack of recognition of different kinship structures in Indigenous cultures, which are different to the 'Anglo-Celtic' system and are based around a broader, collectivist system³.

The ISWG recognises this and notes that although the onus should be on organisations to better engage with Indigenous members and understand cultural kinship differences, superannuation funds must operate within the existing legislative framework. For example, the *Superannuation Industry (Supervision) Act 1993* ('**SIS Act**') allows superannuation funds, in relation to nominations for death benefits, to accept nominations based on their governing rules and distribute benefits in accordance with the nomination as long as it is valid⁴. This leads to variation within the industry.

The definition in the SIS Act of **dependant** includes the spouse, any child, or a person with whom the member has an **interdependency relationship**⁵. It also outlines, along with the regulations, who can receive a death benefit, including a dependant or the legal personal representative of the member.

These legal settings narrow the options a trustee has, despite the law giving trustees discretion to distribute the "benefits to other persons in accordance with their trust deed"⁶. It also creates differences in how trustees approach death benefit distribution when claimants do not fall under any definition outlined in the SIS Act arising from differences in trust deeds.

The scope of the definitions in the SIS Act was considered by Treasury in Discussion Paper exploring the problem it created, the impact it has on Aboriginal and Torres Strait Islander

³ Treasury, *Superannuation binding death benefit nominations and kinship structures Discussion Paper* (2019), 6. <https://treasury.gov.au/sites/default/files/2019-03/c2019-t371937-discussion-paper.pdf>

⁴ Ibid, 3.

⁵ Section 10, SIS Act.

⁶ Treasury, *Superannuation binding death benefit nominations and kinship structures Discussion Paper* (2019), 5.

members, and how to potentially address law changes or guidance that would assist trustees make death benefit distributions in consideration of Aboriginal and Torres Strait Islander kinship structures.

AIST made a submission calling for consultation to occur with Indigenous communities, who are the ones impacted and supporting a broadening of the definition of dependency to recognise cultural and adoption and reflect Indigenous kinship structures⁷. This issue is one of policy reform, and superannuation funds are constrained by a lack of guidance on the matter, or a Government position arising from the consultation, noting that a response has not been communicated.

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However, the ISWG participants recognise that more can be done by industry to enhance processes that facilitate the use of binding death nomination forms. A working group has been set up to review the wide range of forms in place in different organisations, and seek to draft a standard, streamlined form for use across the board. While this may not address the structural issue at hand, it removes a barrier that would enable community service providers and financial counsellors to better assist Aboriginal and Torres Strait Islander members with nominating a person.

Vulnerable Members

A further action taken by superannuation funds, through AIST, has been the adoption of a Vulnerable Members Guidance Note⁸. The Guidance Note was released and adopted in response to legislative and regulatory changes arising out of the FSRC to complement prudential standards released by APRA and legislation implementing some of the recommendations by the FSRC.

Whilst the Guidance Note is intended to provide trustees with best practice on meeting the needs of vulnerable people, it includes a focus on Aboriginal and Torres Strait Islander members. It recognises the challenges faced by Indigenous communities and outlines throughout how trustees can address specific issues, including communication channels, access to and understanding of complex information, identification and KYC processes, and

⁷ AIST, Consultation – Superannuation binding death benefit nominations and kinship structures, *Submission*, 1. https://www.aist.asn.au/getattachment/Media-and-News/News/2019/Kinship-structures-and-superannuation-death-benefi/kinship_structures_and_superannuation_death_benefits.pdf.aspx

⁸ AIST, *Insurance in superannuation – Developing a member policy*, Guidance Note. https://www.aist.asn.au/AIST/media/General/Advocacy/2021/AIST_VULNERABLE_CONSUMERS_PAPER.pdf

adoption of other industry standards to support Aboriginal and Torres Strait Islander members and employees.

AIST and its member funds have set up a Reference Group which will meet quarterly and is tasked with monitoring, promoting and reviewing the Guidance Note. A review will be undertaken after 1 July 2022, after the Guidance Note has been one year in operation.

2. Other matters as required

The challenges faced by Aboriginal and Torres Strait Islander peoples requires broader consideration from Government, communities, industry, and other stakeholders about policy settings that structurally undermine the experience of Indigenous communities when engaging with organisations.

AIST recognises that corporations must understand the needs of Indigenous peoples through ongoing cultural training, better processes that meet the needs of remote consumers, and better accessibility for what can be complex products, in particular in the financial services sector.

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Yours sincerely,

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Eva Scheerlinck
Chief Executive Officer