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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Reference: Structure and operation of the superannuation industry

MONDAY, 5 MARCH 2007

MELBOURNE

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JOINT STATUTORY COMMITTEE ON

CORPORATIONS AND FINANCIAL SERVICES

Monday, 5 March 2007

Members: Senator Chapman *(Chair)*, Ms Burke *(Deputy Chair)*, Senators Bernardi, Murray, Sherry and Wong and Mr Baker, Mr Bartlett, Mr Bowen and Mr McArthur

Members in attendance: Senators Chapman, Murray and Sherry and Ms Burke

Terms of reference for the inquiry:

To inquire into and report on:

The structure and operation of the *Superannuation Industry (Supervision) Act 1993* and the superannuation industry to ensure that it provides an efficient, effective and safe regulatory structure for the management of superannuation funds, with particular reference to:

1. Whether uniform capital requirements should apply to trustees.
2. Whether all trustees should be required to be public companies.
3. The relevance of Australian Prudential Regulation Authority standards.
4. The role of advice in superannuation.
5. The meaning of member investment choice.
6. The responsibility of the trustee in a member investment choice situation.
7. The reasons for the growth in self managed superannuation funds.
8. The demise of defined benefit funds and the use of accumulation funds as the industry standard fund.
9. Cost of compliance.
10. The appropriateness of the funding arrangements for prudential regulation.
11. Whether promotional advertising should be a cost to a fund and, therefore, to its members.
12. The meaning of the concepts “not for profit” and “all profits go to members.”
13. Benchmarking Australia against international practice and experience.
14. Level of compensation in the event of theft, fraud and employer insolvency.
15. Any other relevant matters.

WITNESSES

ADAMS, Mrs Katy, Legal Counsel, Superannuation Complaints Tribunal 2

APPLE, Mr Nixon, Industry and Investment Policy Advisor, Australian Council of Trade Unions 40

BOWTELL, Ms Catharine, Industrial Officer, Australian Council of Trade Unions 40

BYRNE, Ms Ann, Chief Executive Officer, UniSuper 13

CERCHE, Mr Mark, Chairman, Corporate Superannuation Association 30

FURLAN, Ms Jocelyn Joy, Deputy Chairperson, Superannuation Complaints Tribunal 2

McBAIN, Mr Bruce Lindsay, Chief Executive Officer, Corporate Superannuation Association 30

McDONALD, Mr Graham Lloyd, Chairperson, Superannuation Complaints Tribunal 2

MURPHY, Mr Paul, Executive Manager, Marketing and Business Development, UniSuper 13

Committee met at 1.51 pm

CHAIRMAN (Senator Chapman)—I declare open this public hearing of the Joint Committee on Corporations and Financial Services inquiry into the superannuation industry. On 30 June 2006 the committee resolved to inquire into the structure and operation of the Superannuation Industry (Supervision) Act 1993 and the superannuation industry. The committee has been examining a number of industry-wide trends and sectoral issues to ensure that it provides an efficient, effective and safe regulatory structure for the management of superannuation funds. The committee is due to report to the parliament in June this year.

I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. This gives special rights and immunities to people who appear before committees. People must be able to give evidence without prejudice to themselves. Any act which disadvantages a witness as a result of evidence given to a committee may be treated by the parliament as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the grounds upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the grounds which are claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. A witness may also request at any other time that they give evidence in camera.

[1.53 pm]

ADAMS, Mrs Katy, Legal Counsel, Superannuation Complaints Tribunal

FURLAN, Ms Jocelyn Joy, Deputy Chairperson, Superannuation Complaints Tribunal

McDONALD, Mr Graham Lloyd, Chairperson, Superannuation Complaints Tribunal

CHAIRMAN—I welcome representatives of the Superannuation Complaints Tribunal. The committee has before it your submission, which has been numbered 34. Are there any alterations or additions that you wish to make to the written submission?

Mr McDonald—No.

CHAIRMAN—I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr McDonald—The submission really outlines the duties and responsibilities of the tribunal. I do not think I need to address those any further. An area of increasing complaint to the tribunal, over all other areas, is death benefit distribution cases, and they exhibit a large high degree of misunderstanding by the community in relation to superannuation death benefits compared to inheritance benefits. Often the two are confused in the public's mind.

There is also confusion arising from the non-binding nomination form that people fill out. They seem to have difficulty in understanding why the nomination of the beneficiary that they have made is not implemented by the trustee when it comes to reaching its decision. But I have to say a number of the nominations made are for people outside a category that the SIS regulations allow for distributions to occur. That is, you can make it to a spouse, a child—adult or infant child—somebody that is financially dependent, an interdependent or the executor or trustee of your will. You find that people are nominating their brothers, their uncles and other people that are not within the categories allowed, so the nomination is invalid from the outset, which creates its own difficulty.

I have made a supplementary submission to the tribunal on the issue of CDEP recipients—that is, Aboriginal people who are classified for purposes by the Commonwealth as receiving salary and a wage. They are, for instance, included in the statistical information given out by the Commonwealth as being employed. The regulation that exempts their employer from paying the superannuation guarantee describes them as receiving salary and wages, yet of course they do not. There are some concerns about that. Firstly, Aboriginal people, amongst the poorest in the community, are not encouraged to participate in superannuation and receive the benefits that flow from superannuation. Secondly, and I think of major significance, is that they are not covered by life insurance, which is a usual component. It is not legally compulsory to have life insurance with superannuation, but more often than not, and in fact in over 90 per cent of the cases that we see, people have life insurance. So if there is a death prior to the retirement age, that means the family are not receiving the benefit that would usually support children through

further education and the like. They are missing out in both of those areas, and I think that is a matter of some concern.

I have raised it with the minister for Indigenous affairs and written to him. I produce to committee members my letter to him, his response and my further response to him, as well as a letter to the minister for workplace relations. I am aware of the recent inquiry set up by the former Minister for Employment and Workplace Relations and we have made submissions to that. I am aware the government has published a response in relation to it, but the government did not respond on the issue of superannuation for CDEP recipients.

The final thing that I want to comment on is that there is a Productivity Commission inquiry into cost of the provision of services on behalf of consumers, which I take to cover this tribunal as well as other industry based alternative dispute resolution bodies that offer dispute resolution services in the financial services area. The parliamentary secretary to the Treasurer who has responsibility for the tribunal has raised the issue of convergence of these schemes—that is, the Banking and Financial Services Ombudsman, FICS, the insurance ombudsman and the schemes that cover credit unions. It is unclear as to the status of this tribunal, which is a statutory tribunal, whereas all the of the rest of them are industry funded tribunals. And it is not entirely clear what the minister means by 'convergence'. Those are the opening comments I wanted to make.

CHAIRMAN—Thank you.

Senator SHERRY—One of the terms of reference of this committee broadly is to look at trustees' governance and how effective it is. Are you able to make some observations about the general level of governance of our trustee system—the employer-employee system? Do you believe that trustees generally are performing their duties well or poorly? What would be your general description of the governance of our trustee system?

Mr McDonald—We do not look at small superannuation; we are only looking at the regulated superannuation. So we are looking at 75 per cent approximately of the market by asset value. I think it would be fair to say that it is generally good. For instance, in the last year, we had 37 referrals to ASIC or APRA. Where we perceive that there may have been a breach of the law, we are required to report it under the provisions of our act. Out of 1,000 complaints that were within our terms of reference, we made 37 referrals of possible breaches. That is not a high number.

Senator SHERRY—Taking those 37 possible breaches, did you get any feedback from ASIC about whether there was a conclusion that a breach of significance had occurred?

Mr McDonald—No, we do not. We have meetings with ASIC on a quarterly basis about them, but we are not necessarily briefed about the outcomes. Not all of them would have been prosecuted.

Senator SHERRY—I understand that. It would just be useful to know. You have referred 37 possible breaches. I am loath to give Mr Lucy more work because he does appear before us very frequently, as I am sure you know. Perhaps you could liaise with ASIC and just give us an idea about the 37 possible breaches and whether there was anything of any significance found?

Mr McDonald—Sure. I can give you the breakdown. Our statistics allow us to do that. This is for the period 1 July 2005 to 28 February 2007. For corporate super funds there were five referrals. For industry funds there were eight. For retail funds there were 20. For the public sector there were nil and for other or undetermined there were four.

Senator SHERRY—Is there any identifiable pattern of, say, one fund standing out amongst that group of 37?

Mr McDonald—No, not in that group.

Senator SHERRY—You say ‘not in that group’. Is there any identifiable pattern of complaint in any other group?

Mr McDonald—There was. I noticed from a press report some time ago concerns that ASIC had expressed in the press about a fund. It seemed to us that the concerns that ASIC were expressing were in the same terms as the referrals that we had been making.

Senator SHERRY—What were the issues?

Mr McDonald—I honestly cannot recall now. It was some years ago.

Senator SHERRY—Given your experience in dealing with trustees, are you able to identify any areas where the law should be changed to try to improve the level of governance being exercised by trustees? Is there any particular issue that stands out where trustees should be improving their performance?

Mr McDonald—Not specifically. I think that an area that is of growing importance, though—and in which we are going to be seeing more complaints—is successor fund transfers and the lack of clarity in what a person was entitled to under the original fund compared with their entitlement when the fund is transferred, say, into a master trust or whatever. I think there are going to be growing difficulties in that area. I think there is a circumstance there where the trustee of the moment or the current trustee may not be fully aware of the provisions of the trust deed that they inherited. That is going to give rise to problems or is giving rise to some problems.

I suspect the second area where we have experienced some difficulty is with the old superannuation policies, when people seek to integrate their policies into one. There are large exit fees in relation to those old policies. The court has upheld the position of the trustees that maintains those high exit fees, but there is a lack of understanding in the public about those exit fees. There is a growing difficulty in that some of the larger funds that offered those do not actually understand them or how the calculation of the benefit is to be carried out and how the calculation of the exit fee is to be carried out. I am happy to provide the committee with a recent decision of the tribunal. We cannot, of course, name the parties involved due to the secrecy provisions, but it will give you a flavour of the difficulties involved.

Senator SHERRY—Thank you, that would be useful. I think there are about half a million products with significant exit fees still in existence—largely historical I understand.

Mr McDonald—Yes, that is right.

Senator SHERRY—I want to go back to the successor issue. APRA have obviously been relicensing funds and have concluded that process. I know, again I have spoken to APRA in some detail at the hearings, there were processes put in place to wind up, run out some existing funds that did not apply for licence. Have you had any complaints from individuals as a result of that process?

Mr McDonald—Not as a result of the APRA process, but there have been complaints about funds that are no longer in existence—for instance, delayed TPD claims. We have had, in some cases, to go back and find the trustees and trace those through.

Senator SHERRY—My question was not going to the complaint about APRA's process, but the consequence of APRA's process and the wind up of—

Mr McDonald—It has not been a great problem, no. It is nothing that has not been able to be resolved.

Senator SHERRY—You mentioned this convergence issue. I think there are six significant complaints, tribunals, bodies in financial services. Are you able to identify any areas of overlap between these—I think there are six at the moment—or any areas of gap where individuals cannot access some sort of tribunal complaints body?

Mr McDonald—I will start with overlaps. The Banking and Financial Services Ombudsman has jurisdiction over all banks and banks subsidiaries. Banks have moved into life insurance and into superannuation. Theoretically, therefore, complainants of those schemes could go to the banking industry ombudsman scheme. FICS can look at disputes between life insurers and superannuation trustees. We cannot do that because we need an individual complainant to trigger a complaint.

Then there are the issues of the amounts. We have no upper limit in relation to which a complaint can be brought, whereas the schemes all have upper limits. I think it is $280,000 for the Banking and Financial Services Ombudsman, $100,000 for FICS; I am not exactly sure of the current figures. So there are those limitations that do not apply to us. Interestingly enough, although we have no upper limit, there is only one case—it was a death benefit distribution—that involved $1½ million and a further case involving an insured benefit for $900,000. Otherwise, most of the cases fall well below the $500,000 limit and probably the greater majority within up to $200,000 limit.

Senator SHERRY—I mentioned overlap, but what about gaps? Are there any areas where you have had complaint that cannot be resolved by the SCT and cannot be resolved by any other tribunal?

Mr McDonald—No, only on the monetary limits.

Senator SHERRY—Monetary limits I understand. I would be very surprised if you had a complaint concerning a mortgage broker, for example, which is not federally regulated at the moment.

Mr McDonald—No.

Senator SHERRY—Again looking at this issue of convergence and the way in which the SCT operates compared to other tribunals. Have you ever done a cost analysis from the point of view of a complainant of the cost of dealing with a complaint compared to the cost of dealing with a complaint in other forums?

Mr McDonald—The complainants costs? No. In coming to us without representation, there are no costs. There is no fee; there is no cost. Sometimes people want to be represented. We cannot reimburse them for legal and other costs that they might incur because the act does not allow us to do that. So, no, we have not. But I can tell you that the cost of us processing a complaint up to and including conciliation is about $1,500 a complaint. When it moves to determination you can add another $4,500 onto that.

Senator SHERRY—Do you have any comparative analysis with other tribunals of those costs?

Mr McDonald—No, I do not know the costings of the others.

Senator MURRAY—On the same point of jurisdictional coverage, self-managed superannuation funds are regulated. With the much greater emphasis on those funds that is going to result from the simple super package of 11 bills and the money that is flooding into superannuation and the greater extension of these things, I can foresee occasional skirmishes between the members of such funds and the trustees. Is there any reason in your own mind why your jurisdiction should not be extended across to self-managed superannuation funds?

Mr McDonald—Our tribunal is paid for from moneys from the levy. The funds you are talking about do not contribute to the levy so they would not contribute to the cost of the operations of the tribunal in those circumstances—and I thank Mr Cerche for giving me that information as I was not aware whether they paid into the levy or not.

Senator MURRAY—There is the potential to overcome that problem.

Mr McDonald—It becomes a resource problem and that is really the only issue.

Senator MURRAY—And to me that is a separate issue. The question for me is: if there were members of a self-managed superannuation fund who were not trustees and who had a grievance, is there a non-judicial tribunal available for them to access? My understanding is that there is not and I cannot see any clear reason why your jurisdiction should not be extended across self-managed superannuation funds. Do you need to take that on notice and think about it a bit and come back to us, or is the issue clear on its merits?

Mr McDonald—I think that the issue is clear on its merits. It would really be just a resource issue as far as we are concerned.

Senator MURRAY—I think ASIC is similar to you. They are funded from a levy and in fact raise far more money from the corporate world than they use.

Mr McDonald—We certainly do not do that. The point I am trying to make is simply that I do not believe in an expanding dispute resolution centre that is going to take money that would otherwise be able to be returned to the participants in the form of retirement benefits. We have tried to keep the costs of the tribunal down and in fact for the past three years the number of matters that have gone to the more expensive end, the determination end, has remained steady at about 220 to 230. There has been a big increase in conciliation though and we are putting the emphasis there because it is a lot less expensive to sort out, amongst other things.

Senator MURRAY—I am absolutely certain that in terms of human nature, where multimillions are now going to be sitting in self-managed superannuation funds and where the trustees are of different parties from some of the members and where in fact there may be marital disputes and so on that sit in that circumstance, you are going to have the need for low-cost tribunal resolution.

Mr McDonald—I would have thought that marital disputes would be determined by the Family Court in property settlement issues.

Senator MURRAY—They may be, but there may be marital disputes which have not got to that stage but which constitute issues of separation or aggravation. I just have the view that everyone needs access to dispute resolution if possible, that is all, and this is a question of asking what alternative there would be. From my point of view, your organisation has the track record and is the obvious solution.

The other ones that are missing from your coverage are some small state government funds. You mention Victoria, South Australia and Tasmania. I do not know the history of all that. Is this the sort of issue that the committee should be recommending the Council of Australian Governments has a look at with a view to having a 'one-stop shop' in this area?

Mr McDonald—More and more of the state government legislated funds are becoming regulated funds and I expect over time that that will just continue to increase. But it could be accelerated through that process.

Senator MURRAY—Would you have any resistance to us suggesting such a thing?

Mr McDonald—No.

Senator MURRAY—It might not have crossed their mind. It might be as easy as that.

Mr McDonald—The only parliament that has access to the tribunal is the Queensland parliament.

CHAIRMAN—What is your view with regard to trustees being able to provide information to members as a consequence of their definition of advice within the Corporations Act and in the context of choice? Do you think trustees are overly restricted in their capacity to provide information to members?

Mr McDonald—I cannot think of complaints that have raised that as an issue. Often it is the clarity of the information that is given and whether it is misrepresented or does not cover the whole of the circumstances that is the issue for us.

CHAIRMAN—Have you had any disputes arising from the issue of choice that you have been required to resolve?

Mr McDonald—Yes. It depends on how far you extend choice. If that is an amalgamation of a number of funds into one, yes, we do from the successor fund transfer issues. That is where we are seeing the most complaints. Choice, per se, I do not think has really given rise to anything that has yet come before the tribunal but it might be early days. It takes a while for these matters to filter through and come to the tribunal.

CHAIRMAN—I raise this issue because in some of the earlier hearings the role of trustees as against the role of financial advisers has been raised and the extent to which the trustee under their responsibility has the capacity to override advice that a member might receive and a decision that a member might wish to make in regard to choice.

Mr McDonald—If the adviser is an agent of the trustee then they are within our jurisdiction. If they are not, then they are not in our jurisdiction and they would have to go to FICS with respect to that problem. That is our general approach.

CHAIRMAN—But what if the member were in dispute with the trustee? Would that come to you?

Mr McDonald—Yes, if they are in dispute with the trustee.

CHAIRMAN—About choice of fund?

Mr McDonald—Yes.

CHAIRMAN—Have you had any examples of that yet?

Mr McDonald—No.

CHAIRMAN—Do you have any views on how consumers might be better educated in matters relating to superannuation in terms of choice and the benefits of superannuation and long-term savings through superannuation? This is particularly the case with younger people who do not yet seem to be much interested in making contributions.

Mr McDonald—The difficulty is that trustees produce a huge amount of written material for consumers and consumers tend to not read that, and yet the only way really trustees can communicate with their members is in the written form. So we have to take the view that if the trustee has notified the person and the notification is clear, then what more can the trustee do in those circumstances? The person just has not read it and abided by it. That is an area of difficulty.

We have published—and I am happy to give it to you—a death benefits pamphlet to assist in better education of the difference between death benefits and inheritance. We hope that that is getting more widely distributed so that there will be a better understanding in that area. It is undesirable, really, to have disputes about the distribution of death benefits at a time when there is family sorrow and families should be pulling together rather than pulling apart. But if you put a few dollars into the pot, people will start fighting over it.

Ms BURKE—Are several of your complaints based on just sheer ignorance? Do a lot of people have no idea about how super works, what it all means, and think they are being hard done by when they actually do not understand what it is all about?

Mr McDonald—Yes, and most of the complaints around death benefits concern adult children from a first marriage who will say, 'Dad or mum would have wanted all their children to receive equally,' whereas the purpose for superannuation is entirely different from inheritance. It is to support those whom the deceased was supporting at the time of his death or to make provision for retirement benefits for him and his spouse. It is a very difficult thing for children from different marriages, in particular, to understand why they do not get anything from superannuation.

Ms BURKE—Are there any same-sex couple disputes in respect of this?

Mr McDonald—We have had some but not many.

Ms BURKE—Apart from death benefits, are other issues of complaint just from ignorance about how the whole notion of super works?

Mr McDonald—Not those that end up at the final dispute area. Where there is an error in calculation or something of that sort, it will be sorted out—where people misunderstand what the policy provides. The two areas where we receive the most complaints are the total and permanent disablement benefits area, where you are relying on differing medical reports, and the death benefits distribution area. There is misunderstanding in the latter area but not in the former area.

CHAIRMAN—If regulations relating to trustees providing benefit projections were relaxed, do you think there would be an increase in the number of complaints from disgruntled members whose expectations failed to be realised?

Mr McDonald—Yes. They would say: 'I was advised such and such but I've only got so and so. This is unsatisfactory. I was misadvised. Please place me in the same position that I would have been in had I relied on the advice.'

Senator SHERRY—Is that comment based on any case you have had before the tribunal, because some funds do provide projections?

Mr McDonald—Yes, we have had cases of that sort.

Senator SHERRY—Have you examined the UK system or the Swedish system of projection forecasts?

Mr McDonald—No, I have not.

Senator SHERRY—It is a central element of their systems.

Senator MURRAY—Mrs Adams seems to think that she has.

Mrs Adams—Yes, I have. There is a set projection that is required in the UK system, calculated in a set way, and everybody has to do the same thing. I am not aware of the Swedish model.

Senator SHERRY—It is called the red envelope.

Mrs Adams—As was mentioned earlier, the problem is that there is a selective reading of disclosure material. As we said, you might provide a lot of material but it will not be read or read only selectively. If there were a statement of a projected return, that might be the one thing that was read. What we find in complaints about disclosure generally is a selective reading of the disclosure material. That is probably what we are referring to when we say that we see complaints like that. Obviously we have few funds that would give those projections, but the history of complainants is that they look at disclosure very selectively.

Mr McDonald—If it were an overall requirement and there was some formula applicable to it then that may reduce the complaints. Otherwise, I agree with what Katy said.

Senator SHERRY—I understand in the UK the government actuary sets the parameters independently, that a fund or a seller or a planner cannot set the parameters themselves.

Mr McDonald—I think if those parameters were set then there would be little room for complaint. Those sorts of complaints would be unlikely to succeed.

Mrs Adams—We also have the power to withdraw a complaint if it is misconceived, and that would be where we would frequently withdraw—where the disclosure was clear; it has just been read selectively. So then we would be saying, ‘You have no grounds for complaint. You have been given correct information.’

CHAIRMAN—Have you had any experience of complaints related to unit pricing errors?

Mr McDonald—Yes. Some of those are related to the older schemes as well. I think the example I will forward to you will perhaps assist you in that.

CHAIRMAN—How do you resolve those sorts of errors?

Mr McDonald—It depends what the complaint is. Some of them are very difficult. We fortunately have a couple of members of the tribunal who are actuaries, and, in the one I will forward to you, they actually undertook to do calculations and assist us in trying to find the right answer. So they can be very difficult to resolve and very expensive from the tribunal’s point of view.

CHAIRMAN—If compensation of members is involved in the outcome of that, where does the money come from to provide that compensation?

Mr McDonald—The fund, yes.

Mrs Adams—If it is a systemic issue across the fund—and we have had a number of those—then obviously, if another regulator had adequately dealt with that complaint, we would not see ourselves as having jurisdiction. So it may be that it is a systemic issue and it is not just an individual who has misunderstood unit pricing and how it operates.

Mr McDonald—We cannot really give you an answer to that, because that is not our problem, in a sense; that is the fund's problem. There was a recent case of Poulter—and I can quote the name of it because it went to the Federal Court—where there was quite a large amount involved for the fund to adjust through all of the complainants that were in the same situation as the complainant in our case. Where those funds came from, I do not know. Sometimes they complain to us that they do not have a reserve from which they can pay. The answer to that is that perhaps they should think about having one. Maybe some of them are also associated with professional indemnity insurance; I do not know. We would not know the follow-on to those complaints.

CHAIRMAN—Are there any further questions?

Senator SHERRY—Could I come back to one comment Mr McDonald made. I noticed the smiles that broke out on all three faces with respect to reading and understanding of information on superannuation. I think you said words to the effect that members tend not to read material that is published. Why is that?

Mr McDonald—I can only give you anecdotal evidence: upon receipt, it is just too much to be expected of them to read that sort of detail.

Senator SHERRY—I questioned ASIC about how many short-term PDSs were out on the market yet. Apparently it is zero. Do you think there is a difficulty in the balance between providing members with necessary information as distinct from very simple, readable information? I get—and I know, at the hearings with ASIC, we have had—complaints across the board from everyone, from the industry to consumers to consumer organisations, about the difficulties of people understanding and reading lengthy documents under FSR.

Mr McDonald—I think they tend in many cases to be written by lawyers in order to protect the trustee, and documents written by lawyers are not necessarily the most readable documents in the world.

Senator SHERRY—But is that their fault? I have heard the bashful lawyer scenario.

Mr McDonald—I am not saying it is their fault.

Senator SHERRY—In some areas of super, we have simple, standard, statutory documentation—choice of fund is a very good example. Isn't a part solution, at least in some

areas, to have a simple, standard, statutory formatting of some areas of advice, for example, so that there is no legal issue or generally will not be a legal issue?

Mr McDonald—In trying to simplify things in those circumstances—as you would probably be aware, for instance, the attempt by the Commonwealth government to put the Social Security Act into so-called simple English has resulted in more litigation than was ever thought possible when it was in lawyer English, if I can put it that way—I do not think there is any easy solution, because often the point, from our point of view in terms of looking at complaints, will be in the fine print somewhere about what the person was advised with respect to the terms of their insurance policy. I do not see any necessarily simple way in which you can convey that information and have the information be complete. So I suspect that that is going to lead to more litigation, in the sense that what should have been included was not included insofar as this particular complainant is concerned in these circumstances. It is so difficult to cover all of the circumstances.

Senator SHERRY—Was the SCT consulted on—I think they were released last week—the standard portability forms for transfer from one fund to another?

Mr McDonald—No.

CHAIRMAN—As there are no further questions, I thank each of you for your appearance before the committee and for your assistance with our inquiry.

[2.31 pm]

BYRNE, Ms Ann, Chief Executive Officer, UniSuper

MURPHY, Mr Paul, Executive Manager, Marketing and Business Development, UniSuper

CHAIRMAN—Welcome. The committee has before it your submission, which we have numbered 82. Are there any alterations or additions you wish to make to the written submission?

Ms Byrne—No.

CHAIRMAN—In that case, I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Ms Byrne—Thank you for this opportunity to speak you today. We noted in our submission that you are looking at very broad terms of reference but we have decided to look at one particular aspect because that is one that we would really like to see some change to, and that is about the role of advice in superannuation. We are seeking for you to consider a relaxation of the term ‘advice’ so that it is easier for superannuation funds to provide education and therefore advice to their members—to think of UniSuper, the superannuation funds for Australia’s university and research sector.

We want to be able to educate our members and empower them to make decisions and therefore to allow them to make and use whatever channel they want in finding out about superannuation in terms of education and advice. We think that at the moment there is a debate stuck on the fact that individuals need to go to financial planners. In some circumstances, individuals do need to go to financial planners, but not in every circumstance. There are many circumstances where individuals can seek information and clarity from their super fund, in which we are restricted from giving them that information unless we give them full blown financial advice. There are particular circumstances about that. It might be about salary sacrifice; it could be about whether they should split their contributions with their spouse; it could be in fact about their investment choices. These are reasonably simple issues that people deal with.

However, if we talk to our members and take their circumstances into account—that is, how much money they earn, how old they are, how much they have in their account—that is seen to be giving full financial advice; therefore you are always giving people information in the general. For most of us, that is often not very useful, because you want to know how it affects you as an individual: if your salary is this rate and you salary sacrifice at that rate, how will that benefit you?

For UniSuper and other not-for-profit super funds, by giving this information and therefore this advice—which normally would mean that the member was putting in additional money—we ourselves do not receive any extra money for that. Our fees are flat, so if people put in more money we do not get any administration fee. Of course, if they do put in any additional moneys, there is an investment cost on that. So what we try to do with our members is focus on how much is enough for them to live in retirement, but we feel that we are restricted in our education

programs with them and we are also restricted in empowering them to be able to calculate what they need for their particular circumstance.

As I mentioned before, some of those things are about voluntary contributions, spouse splitting and insurance cover. They are not high-level issues to do with advice. Our submission to you is that really there are a whole range of things within superannuation which could be very easily tailored for individual members which are not about full advice.

Because of the current definition of advice, we have been restricted on the number of tools and the sophistication of tools that we can have for our members on our website—because, as soon as you have a tool where they put in their own individual circumstances, that is seen to be advice, so they have to get a full statement of advice. Therefore, once again, it is not as we think it should be for allowing people to think about their own particular circumstances. Our submission is that we think that the definition of advice should be changed.

CHAIRMAN—In relation to advice, you are arguing that ASIC interprets the definition of personal advice too broadly, hindering the efforts of trustees to educate members. Can this be fixed by legislation? If so, how would you move in that direction—or is there another solution?

Mr Murphy—There has been an ongoing debate about the definition of personal advice and where it starts and stops. When looking at the question of online calculators in particular, I think there was an assumption in what ASIC was asked to do that you could actually have calculators that were merely for educational purposes. But the practical working through of that does not seem to have come out that way. In a sense, as soon as you have regard to anybody's personal circumstances, which might be their salary or their age or whatever, it kind of triggers these advice provisions. So it inhibits people being able to make decisions themselves based on mass, customisable kinds of inputs like online calculators. That is where we have found we have been stuck.

CHAIRMAN—What sort of information that is particular to individuals should be sufficient to trigger the requirement for a statement of advice to be provided to them?

Ms Byrne—It depends on what the member is wanting to do. If someone is looking at the whole lifestyle for their retirement and therefore they are trying to plan over that particular period, that probably is something that does require there to be a statement of advice. But, if they are doing one transactional process, where they are making a decision about whether to salary sacrifice more or, in some cases, less, that does not require a full statement of advice. If we are talking about single transactional issues, that should be simple for people, but, if they are looking at their whole life circumstances and then making a full planning decision, that probably does need a statement of advice.

CHAIRMAN—One of the issues that has been raised in earlier hearings—and you might have heard me raise it with the complaints tribunal representatives—is the potential for conflict between trustees and financial advisers with regard to advice and the responsibilities of the trustees in that situation. What is your view on that?

Ms Byrne—The potential for conflict between trustees and advisers?

CHAIRMAN—Or trustees and members, for that matter—even if a member is not getting advice, a decision that a trustee might make about asset allocation and the like which differs from what a member might want. The issue has been raised with us in earlier hearings that, under the legislation, the trustees have responsibility in that regard.

Ms Byrne—Yes, they do, but there are certain requirements of trustees. Each year they notify the members of the asset allocation for whatever—if it is an accumulation member—investment choice they are in. There are guidelines about what they may or may not do within their various asset allocations. If they are to make any change to that asset allocation, we are required to give the members at least three months notice for those changes.

There will not necessarily be that many disputes about those particular sorts of issues in terms of asset allocation, because they are covered in the current guidelines. It is not a static thing. When people do the asset allocation, it will say that if there is, say, a property allocation it will be between some ranges, and that is what is given to members. The amount of shares is also within those particular ranges. So that is a standardised thing across all superannuation. That seems to work very effectively, because people understand that the trustee will operate within those various ranges. To go outside those ranges, they have to give people notice that that is their intention.

CHAIRMAN—Do you think there is a way in which the regulation of advice can better accommodate the difference between advice that relates to marketing of a product or switching funds as against other types of advice?

Ms Byrne—Yes, we do. We think there are transactional things that members do within a fund. They are about moving an investment choice within their fund, putting in fewer contributions, deciding to make co-contributions and potentially splitting their contributions with their spouse—which are very different from someone deciding whether or not they are going to move from one superannuation fund to another. One is about the information and what is available to them within the fund. The other is deciding between two distinct products. So the advice required for those two distinct products does require full advice.

We find that we are restricted because we would like our members to be able to make their own decisions about those transactional things. At the moment we cannot give them appropriate information because it is all about John or Mary—whatever—who is on an average salary, who is an average age. The individuals would like to be able to plug in the data about themselves.

CHAIRMAN—What sorts of projections do you provide to members and over what sort of time frame?

Ms Byrne—We are very restricted at the moment providing projections to our members because of the asset guidelines on calculators. They have said that it is very difficult for most superannuation funds to do that. In terms of our projections, what we do is go to the asset allocation if the person is in the accumulation fund and give them projections based on what the return would be in those various asset allocations—the underlying assumptions. So we tell them what is the top they might get and what is the worst case scenario.

CHAIRMAN—Over what time frame?

Ms Byrne—Ten, 20 or 25 years, depending on the length of their expectation in the fund.

CHAIRMAN—So some funds are giving 40-year projections?

Ms Byrne—Some people will be in funds for 40 years and some people are a bit older than that, so they are not going to last the distance.

CHAIRMAN—So what sorts of assumptions would underlie those sorts of projections and cost factors?

Mr Murphy—Bear in mind that we run a defined benefit plan, as well. For accumulation members, all of the investment strategy options have some actuarially determined expected rates of return. So the forward projections would be based on what has been disclosed in the product disclosure statement—the best estimate return over the period that is selected by the members between now and the target date of retirement that they have specified. So it links back to what is the disclosure document; it gives them a calculation based on that.

Ms Byrne—So if a choice says that it is going to beat the CPI by plus three per cent, that is what the projection is based on. Then it is based on what the member is going to put into the option, what they say they are going to put in, what percentage of their salary they are going to put in, what their current age is and what age they would like to retire.

Mr Murphy—One thing we do which a lot of other people do not is put in ranges—what the best and worst case outcomes might be. There is the expected return, but we also try to illustrate volatility. For example, the fact that you are following an accumulated investment strategy that is very weighted in growth assets means that there might be more downside risk associated with that. We try to quantify that in the calculations.

CHAIRMAN—To what extent have your costs increased because of the advent of trustee licensing?

Ms Byrne—We have calculated this, but I do not know off the top of my head what trustee licensing has cost us. If you would like us to provide that to you at a later date, we can.

CHAIRMAN—That is fine.

Senator SHERRY—But I take it from your response that your costs have gone up.

Ms Byrne—Yes, they have. It is an additional licence. We have a full AFSL licence. The trustee licence has been additional cost. We have been able to equate that to time across all the various administration departments and that sort of thing. We have done that.

CHAIRMAN—Do you disclose executive and trustee remuneration to your members?

Ms Byrne—Yes.

CHAIRMAN—Do you provide any sales incentives to staff?

Ms Byrne—No.

CHAIRMAN—You talked about trustee advice. How is that transmitted to members? Is it purely general advice that you are giving? Do you give individual advice?

Ms Byrne—We have a full financial planning licence, so we give individual advice to members. That has to be done on a one-on-one basis.

CHAIRMAN—Is that on a fee-for-service basis?

Ms Byrne—No. If they are talking to us about their superannuation in UniSuper there is no fee. If a member wants to talk outside of superannuation, we will send them to a group of planners that we have selected and trained. They will then pay a fee to that planner to get that much greater advice, which is normally about much greater than superannuation.

CHAIRMAN—But within the fund people can gain advice with no fee?

Ms Byrne—That is right.

CHAIRMAN—How is the cost of that borne? That must be a cost.

Ms Byrne—The cost of that is borne across the total membership within their administration fee.

CHAIRMAN—So members who are not getting advice are paying for the advice that is given to those who do receive advice?

Ms Byrne—You could say that, but I think that all services are provided for all members, and there are some members who do not access all services. Those people who access financial advice may not access another particular service. They may not be ringing on the phone; they may not attend as many seminars. All of our general services to all members are in fact covered in the administration fee. We run seminars in all workplaces across Australia that are open to all members and sometimes targeted to different groups of members.

CHAIRMAN—Have you had any issues of unit pricing errors in your fund?

Ms Byrne—No. We unitise at the investment level; we do not unitise at the member account level. We apply an interest rate. There are some UniSuper members who ask us questions about our investment returns, because they like them calculated to quite a large number of decimal places, and we think six is enough on a daily basis.

Senator MURRAY—These are people from the maths departments.

Ms Byrne—They tend to be from the mathematics departments, yes.

Mr Murphy—Or retired professors of mathematics.

Senator SHERRY—I want to come back to the issue of limited advice—I think that is how it is referred to. It is advice within a fund about specific issues. Is it your general observation that a member needs to have access to advice about everything within a superannuation fund every year? What level of use would a person make of limited advice?

Ms Byrne—Not every member would use it every year, but there would be some time through their working life that they would in fact like limited advice. If someone is coming to a new employer, they would like limited advice about whether they have enough insurance and whether they should take out one unit—which is the default level of cover—or six units. They need limited advice on that.

Also at some point if they are looking at their investment options—and most people would initially go with the default—they might think, 'Should I take the shares option or should I take the cash option?' They do need limited advice about that. Salary sacrifice is another issue; and we think people need advice to work out the value of that. So there are particular situations which may happen at various times depending on the person.

Senator SHERRY—So we are talking about particular situations at particular points in a person's life.

Ms Byrne—Yes, and they are different for each person. As you know, as people get older hopefully their children have left home and they might have paid off their mortgage. At that time they are thinking of putting more into superannuation so they want to know how much they should put in and what the benefit of that will be.

Senator SHERRY—I understand what you mean, but, just for the record, you are not talking here about ongoing advice offering effectively limited advice on everything within a super fund every year to a member?

Ms Byrne—No.

Senator SHERRY—There is not a demand for that?

Ms Byrne—No.

Senator SHERRY—It tends to be around a specific issue and a specific event at a specific point in time.

Ms Byrne—Yes, it is either an event or a life cycle issue. In our experience, people turn 50 and then they start to think about superannuation. That seems to me a life-cycle event. After that 50th birthday they seek additional information. At the moment, it is very expensive for us to provide that because it has to happen on a one-on-one basis. We would like them to be able to do it very quickly on our website, which is their preference.

Senator SHERRY—So FSR obviously needs changing because you cannot give specific as distinct from general advice under the current regime. To the extent that that limited advice has to be disclosed in writing to an individual, would you like to see standardised simple advice documentation?

Mr Murphy—I guess this gets back to this question about standardised projections.

Senator SHERRY—I am talking about a standardised form for death and disability, a standardised form for a projection on extra contributions and a standardised form for investment option selection.

Mr Murphy—And that would all be disclosed under a standardised set of assumptions.

Senator SHERRY—Yes.

Mr Murphy—I think the answer to that is yes. I suppose the theme we are trying to promote in this member education space generally is that it is not just about how much money you are going to end up with but, rather, trying to convert that into something that is meaningful in terms of how long that will last you to live on. So, for example, a financial projection on its own that yields a result that says you need $347,000 is still a very abstract concept for people. They then need to annualise that and understand what it means in terms of their longevity expectation.

Senator SHERRY—So you would need to look at current dollar values and also perhaps some comparative analogy to the value of the age pension, for example.

Mr Murphy—Yes.

Senator SHERRY—I saw a recent example of that which I thought was quite useful.

Mr Murphy—We would say that it is quite a dynamic exercise. What we are trying to do is to get people engaged in the topic of the adequacy of retirement savings generally. Part of that is about the quantum of money that people are going to need, but so are things like getting your head around budgeting—for example, what do you think you are actually going to need to live on in retirement? Investment risk goes into that equation as well.

Senator SHERRY—You touched on an area that causes me some concern—that is, to what extent should advice be paid for from superannuation? Is budgeting in retirement a legitimate cost to be paid for by a retirement income system?

Mr Murphy—I am not sure if it is so much a cost—

Ms Byrne—The way we look at it is to get people to start to think about what they will be spending their money on in retirement. So it is not about saying to people, ‘This is a course on budgeting.’ It is about saying: ‘At the moment you might spend this much on entertainment. What do you think you are going to spend on it in retirement?’ It is about getting people to think about the difference between a working person and a retired person. It is about saying that there are differences. We might say: ‘You’re going to have more free time. Are you going to have to change that particular allocation?’ Part of our seminar program is to get people to start to think about that.

Senator SHERRY—But you draw the line between advice within a fund, limited advice on specific issues, as distinct from advice between competing funds.

Ms Byrne—That is right.

Senator SHERRY—Earlier the chair referred to the charging mechanism for the advice you offer, which is effectively paid for by all the members. Conceptually that is no different from death and disability insurance, is it, where all the members pay but very few would benefit?

Mr Murphy—That is true; or other services like having a website where some register and some do not. There are some costs that I suppose are borne by the membership collectively and others that are charged out on a user-pays kind of basis.

Senator MURRAY—It depends on the size, doesn't it?

Mr Murphy—Yes, it does.

Senator MURRAY—Just assist Senator Sherry and I, if you would not mind: how many people provide this personalised advice? Is it a large number?

Mr Murphy—Seven, Australia wide.

Senator MURRAY—So it is not a big cost.

Ms Byrne—No; but also think about it in terms of the administration fee—for one of our accumulation funds that is a flat fee of $78 a year and the other is $140. That is what is covering all of those particular services.

Senator SHERRY—I am sure you do not have the figures today but I would be very interested to see what the actual costs are—I am sure you would have worked that out—of the different types of advice through your model. We hear the argument about planners needing to charge X amount, and it usually turns out to be thousands of dollars a year if there is a trail commission involved, in order to advise people. I would be interested to see how cost effective your particular model is. Can you take it on notice to give us that information?

Ms Byrne—Yes, we can. We do track that.

Senator SHERRY—I thought you might. I would be very interested to see how cost effective it is against the allegedly stand-alone planner model. We have touched on FSR to a significant degree. Have you been able to produce short-form PDSs as yet and, if so, how short?

Mr Murphy—Not yet. We are looking at it. We were here for the committee's earlier session and I could say the same anxieties about the legal risk inevitably come to bear, so I suppose there is a bit of a reluctance to be the first mover in that area. By and large I think we would be quite happy to put our toe in the water on things like that, and in the advice area as well. If there is some ambiguity why not exploit it in the interests of the consumer rather than erring on the defensive all the time—

Senator SHERRY—You had better be careful of those retired maths teachers or retired lawyers!

Mr Murphy—We have to have regard to those stakeholders when we do those things.

Ms BURKE—Do you think one of the benefits of your fund is the actual membership base you are dealing with, that you are dealing with more highly educated individuals who can probably comprehend a lot of their super than other generalist funds? I know you take general staff as well as academic staff, and I am not having a go at either section, but you are dealing with more of an educated elite than a lot of other super funds are.

Ms Byrne—I will not comment too much on that, but UniSuper members are in fact highly educated, particularly the academic staff. Not all of them are highly qualified in financial matters. They may be dealing with agricultural science or a social science area or whatever, so there are some who are highly educated but when it comes to financial measures would be the same level as some other members of the community. But we are fortunate in that they have generally high levels of written skills—

Ms BURKE—They can read and understand the documentation.

Ms Byrne—and they can read and they can normally calculate. Not all of them understand percentages, similar to the general population, but generally, yes, they are much more highly educated.

Ms BURKE—So some of the benefits that can flow to your membership base you could not necessarily impose on other funds, just by virtue of the fact that you are dealing with a membership base that does actually looks at your website fairly regularly.

Ms Byrne—That is not to do with levels of education, that is to do with access. Ninety-eight per cent of our members have access to the web at work.

Senator SHERRY—That is extraordinarily high.

Ms Byrne—Other funds do not have that simply because of other people’s working circumstances—if they are working at a machine they are not going to be able to go to the web. So ours are very fortunate in that way, that they have access, and that is why we would like to promote it because they use that as part of their work every day.

Senator SHERRY—This question is not pertinent to this inquiry, but I will ask it anyway. It is not going to be too inflammatory. How is the defined benefits section being treated for the purposes of the ‘tax-free’ superannuation access at age 60? Is it a rebate because it was in a tax scheme? I presume you have worked that out. Is yours a tax scheme on the DB side?

Ms Byrne—Yes.

Senator SHERRY—So it will be a 10 per cent rebate, not tax free?

Mr Murphy—Tax free from age 60, yes. It is the same as with an accumulation benefit. The only issue as to defined benefit was in relation to the $50,000 deductible contribution limit, where the notional contributions might in fact exceed that for some people and there was a

deeming rule put in that said people in those circumstances would be deemed to have complied with that limit.

Senator SHERRY—Given the DB element in your fund, are you able to advise a member who wants to make additional contributions what the effective value of their DB is so that if they want to put extra in they will not breach the contribution limits?

Mr Murphy—Yes. That is in fact one of the areas where people do need quite specific information and advice.

Senator SHERRY—How are you handling that?

Mr Murphy—If they want to supplement their savings it will go into an accumulation account so that it does not actually affect the defined benefit component, but in aggregate it is still a contribution going into their account so those dollar limits of $100,000 or $50,000 would still take effect.

Senator SHERRY—Given the nature of your fund—and I suspect you do this but I would be interested to know, if you do, how you do it and what the results are—do you examine transfers out as a result of choice of fund? If so, what observations can you make about its operation?

Ms Byrne—Yes, we do. Most recently we have observed portability. Because of the nature of our fund, we have had very few transfers out due to choice of fund. We have had some 125 since portability.

Senator SHERRY—Do you actually examine those to determine whether or not the member has been—to put it frankly—conned?

Ms Byrne—No. At the moment we have done no analysis to actually determine where they went. We have not gone back and talked to the member to ask them why and what it was and whether they were dissatisfied with UniSuper in some way. We have just been talking about it. We think we should do that to get a feel from those 147 as to why they did that.

Ms BURKE—Have you done any serious analysis as to anybody coming into your fund?

Ms Byrne—It is a particular circumstance. The only way that you can come into our fund is to actually work within the sector.

Mr Murphy—We are not a public offer fund.

Ms Byrne—Yes, we are not a public offer fund. If they come in, they will have been working at a university or in one of the research organisations.

Ms BURKE—I will put on the public record that I am a beneficiary from the fund. Both I and my husband are, and I would say it is one of the better ones. I have declared that publicly.

Ms Byrne—We do know that a substantial number of our members who in fact left the university sector and then left some money in UniSuper have now asked their new employer to start paying into UniSuper.

Ms BURKE—Yes, you could do that.

Ms Byrne—Yes, you can actually do that.

Ms BURKE—On retirement would the majority of people stay and receive their benefit from your fund as an annuity; they would not then go and see a financial planner and move it somewhere else? I assume a lot of them would actually stay within the fund and receive the money.

Ms Byrne—The point at which our members have choice of fund in absolute reality is at that point of retirement. If they stay in UniSuper they have access to our full suite of pension products, which includes an indexed pension, an allocated pension, a commercial rate indexed pension and the new term allocated pension. They will also have a simple super pension from 1 July. We currently keep about 60 per cent of the people at retirement age. The other 40 per cent decide to move somewhere else.

CHAIRMAN—Given the discussion we were having earlier about most of your members being in the better educated segment of the community, have you any statistics that would indicate whether that is reflected in your younger members being more likely to add to their super contributions? Are they aware of the long-term benefit of saving through superannuation? Generally, across the community you would have to say young people still do not seem to be aware of that. As you said, most people take an interest in their super around the age of 50. Is there any indication that your fund, perhaps compared with other funds, is getting additional contributions from the younger members or are they simply putting in the compulsory amount?

Ms Byrne—For members who work full time in a university, the structure of the fund is such that they are required to put in seven per cent of their own moneys. Very few of the young people opt out of that. So the default is seven per cent of their money. From 1 July last year they were given the option to opt out of that seven per cent contribution and very few people have in fact done that.

CHAIRMAN—It is opt out rather than opt in though.

Ms Byrne—Yes, that is right. Because of its history the structure of the fund provides that. We do see generally that people start to put in extra moneys over and above that as they get a bit older—at about 48, and after 50 people start to put in much higher levels of contributions over and above whatever is the compulsory component.

CHAIRMAN—You said earlier that you only have members who are within the university sector.

Ms Byrne—University and the broader research sector.

CHAIRMAN—How are the trustees appointed?

Ms Byrne—The trustees are appointed in a whole range of ways. There is an electoral process, we have an electoral college and then there are two independent directors. The electoral college is half employer, half employee. The academic representatives on that college elect the academic rep and the general representatives elect the general rep. The employer reps in that college elect the two employer reps. The vice-chancellors themselves elect two vice-chancellor representatives and then those eight people appoint independent directors.

CHAIRMAN—So those eight directors appoint the other two?

Ms Byrne—Yes.

CHAIRMAN—How is the electoral college itself elected?

Ms Byrne—Each university goes through a process of electing those people. Depending on size, most universities have four people to the college, two of those are employer reps, two are employee, one academic and one general and they are elected through a process within each of the universities. Some of the smaller universities only have two representatives to that particular college.

Senator MURRAY—It sounds like the vice-chancellors have got a grip on this!

Ms BURKE—Slightly overrepresented!

Ms Byrne—It is two out of 10.

CHAIRMAN—How many vice-chancellors are there are in Australia?

Ms Byrne—There are 37. Everything is by two-thirds majority as is required by law.

Senator MURRAY—It is not entirely democratic. Do you know whether large numbers of your members are in self-managed superannuation funds or have switched across to those?

Mr Murphy—Probably the biggest single source of exits from our fund, in terms of dollars in particular, would be to self-managed funds amongst retiring members. It is probably a different story amongst people who resign and move on to work somewhere else.

Senator MURRAY—I would suggest the number that would have both—in other words, would be your members and have self-managed super funds—would be very high and that would therefore qualify your answer earlier about additional contributions being made. People will not be making additional contributions to you; they will be making them into their self-managed super fund.

Ms Byrne—That may be the case. We do know from surveys that a proportion of our members have self-managed superannuation funds. We also know for those who keep one of the UniSuper pension products as well as a self-managed super fund that, when they get to a certain age and come to one of our pensioner seminars, they wish to unwind that self-managed fund. They feel that they do not have the time and energy to continue managing the self-managed fund and neither do they want necessarily to ask their children to do it for them.

Senator MURRAY—Without speaking for him, I am aware that this is an area which has concerned Senator Sherry before.

Senator SHERRY—You can speak for me, Andrew—I trust you on this sort of issue.

Senator MURRAY—He is particularly expert, I might say, on matters of superannuation. People have been enticed into self-managed superannuation funds by accountants and others for the wrong reasons. Do you intend, if you are going to start surveying people's needs, to try to identify the level of multiple funds? You have indicated that you think that it is unlikely that people have multiple normal super funds—that if they are in the sector they are in the UniSuper scheme and they are not going to be in some other scheme as well. It would be of great interest for committees like this to find out from people like you exactly what is going on with respect to particular sectors and why they are in different product types.

Ms Byrne—Self-managed funds have interested UniSuper for some time. We do see that as something that our members may wish to take up or think is a good option for them. About 18 months ago we did a whole range of focus groups on members who had left the fund. They had left the university sector and they then, from what we could gather, looked like they had got into self-managed funds. We drew them together in a couple of cities to talk to them about why they had done that and whether or not it was because of something about UniSuper. If I recall correctly, it was not to do with UniSuper; for many of them, it was that they felt they could somehow do better. But one of the people who came along to the Melbourne group said they thought they could do better but they never realised it would be so detailed. They had left UniSuper, taken their money and had invested it in cash for some 18 months and were very pleased to be going back to Melbourne university where they could rejoin UniSuper and put their money back in. It is an area that warrants some research about exactly what people are doing. But all of the research I have seen says that it does give people some sense that they have greater control.

Senator MURRAY—I listened to the discourse about how educated your members are. As a person who has spent a lot of time in universities, I would merely comment that I have come across the same number of fools in universities as you find anywhere else.

Ms BURKE—It just means they can read!

Ms Byrne—I will not comment on our membership.

Senator MURRAY—The fact is that not everyone is suited to these matters.

Senator SHERRY—You are not speaking on my behalf when you make that comment, Senator Murray. Perhaps I could more tactfully put it that in the UK there was a surprising proportion of university staff and teachers who were caught by the misselling scandal, much more than you would have assumed, given their education levels.

Senator MURRAY—You can be brilliant in one area but foolish in another. That is as part of being a human being.

I want to ask about the distinction between general and personal advice. In my own mind it is often a false distinction. In other words, a 55-year-old single woman is likely to get advice which would apply to all 55-year-old single women; it is not going to necessarily be particularly different. That is a general comment. When you look at newspapers, which are giving an immense amount of advice at the moment, sometimes it is personal, where somebody has written in and said: 'This is my circumstance. What do you think?' Do you ever look at that newspaper advice and think: 'If we did that, it would be against the law. We would have to give a statement of advice with it and so on'?

Ms Byrne—The questions that are answered in newspapers?

Senator MURRAY—Yes.

Ms Byrne—I sometimes look at them with interest and wonder how they came to their conclusions, yes. But that is general advice. It is information.

Senator MURRAY—But quite often they are responding to an individual's question. In your circumstance you would have to give a statement of advice. That is right, isn't it?

Ms Byrne—If you took into account the particular circumstances of the member and knew their age, salary and what they are putting in, yes.

Senator MURRAY—I am trying to support the philosophical thrust of your submission in that I think the definition of 'advice' it is a little overtight. I think general and personal advice cross over far more often than people accept.

Ms Byrne—In reference to your earlier comment, if you characterise someone as a particular person—as you mentioned, a 55-year-old single woman—they could require totally different pieces of advice. It would depend on whether they worked full time or part time, what their salary level is, what their expectations are about the rest of their working life, whether they had been married—a whole range of things. Just because someone has a couple of particular characteristics it does not at all mean that they do not need particular advice. Our submission is that you should be able to take those circumstances into account for transactional issues to allow people to be able to make those decisions themselves.

Senator MURRAY—I accept that only in theory. In my experience, the most distinguishing feature of advice is where you put the investment and not what is needed by the individual. I accept the broad point that individual needs do differ, but we have found in these inquiries the greatest quarrels have been over where the investment has gone, what the return has been and who has benefited by that investment. That is where you need the greatest care. The actuarial calculations that surround an individual's particular demographic, if you like, are less contentious.

Ms Byrne—There are other areas, not just investment. Think about insurance. As was noted by the Superannuation Complaints Tribunal, there are many disputes that centre on insurance, about whether or not someone took up insurance or whether or not they had enough insurance. Many people take just the default insurance. It may have been better for them over a period to take some additional units, so that if something did happen to them in that particular time their

dependants would have a better life. You do not actually see that, because they just did not take it—they just have their one unit. That is a particular piece of advice that we think we should be able to give people so people can think about it appropriately.

Senator MURRAY—Part of the calculator process allows for a quite infinite variation being inputted into the calculator to get different outputs. Do you think there is any case for an intermediate form of the calculator almost based on a cameo approach—in other words, there is a particular common type of demographic, classes of people, of a significant size to which you could ascribe a generalised approach? We see this very commonly in, for instance, tax literature. There might be typical categorisation of a single parent with two children under the age of 10, for instance. You get that sort of approach.

Ms Byrne—You can do that, but when it comes down to someone thinking specifically about their retirement they want to know about them. They want to know that if they have this much saved, if they put in this much and their salary is this, how much they are going to have for the rest of their retirement. What will I be able to live on? Will I not have enough to live on? That is very particular, because they may have expectations that what they would like to do in terms of their income is either live in the beach shack somewhere or travel. It is a very different scenario when you are talking to people about what they would like to do and how they would like to live in their retirement.

Senator MURRAY—I am asking you these questions deliberately because we get a conflict in evidence. You say that people want to know their particular circumstances but you also say that they are highly selective in what they read and take from the advice. The reason I am asking you these questions is that it seems to me that people say they want personalised advice but often really want to know what should reassure them with respect to their type of person and what sort of income they should go for. To an extent, superannuation companies and associations have been groping towards this. They have been talking about how much you need to save to get a typical income that will satisfy a typical demographic—middle-income Australians and so on. I wonder if, in the calculator approach and the approach about advice, we need a halfway house between general advice and what I would describe as cameo or class advice and personal advice. Does that make any sense to you?

Ms Byrne—It does. I think you can do that cameo advice now by saying, 'If you were this particular person and this was your salary—

Senator MURRAY—But that is not done commonly, is it—not in superannuation?

Ms Byrne—I think so.

Mr Murphy—We have done it with a couple of particular initiatives. Ann mentioned earlier that people were allowed to reduce their compulsory member contribution in our defined benefit plan and in another accumulation plan. That was done by that typical cameo approach: 'Fred and Betty are in this circumstance. Here is their situation, and you might relate to that.' That plants the suggestion that someone might want to go down that path.

Ms Byrne—There were four different cameos—for example, the married couple with the child, the single person, the older group et cetera. You can do that now—and people do do that—

but in fact people want to know about themselves. We do our planning a little differently. Rather than saying to people what it is, we say: 'How much do you think is enough? What do you want to live on in retirement? Do you want it to be 75 per cent or 50 per cent of your final salary?' We also try to get them to take into account the fact that they will most likely live past the average age of death, because most people live past the average age of death for their particular cohort. If the average age for them is 82, it is more than likely that they are going to still be alive at 92. So we ask them to also think about that particular end: they are not just going to last until that average age but are going to go past it—or want to go past it.

Senator MURRAY—Mathematically that does not make sense: most people cannot live past an average age.

Ms Byrne—Sorry, 50 per cent of people.

Senator SHERRY—If you live to 50, the chances are you are going to live well beyond the average age.

Mr Murphy—One of the things about individuals making these projections is their own longevity expectation based on their family history. Having a prescriptive thing that everyone is going to die at the same age does not in fact cater to those people. What we are really trying to do is to engage people in this interplay between issues like life expectancy and other variables. Expected retirement age is another one: you can have a straight line projection that assumes that everyone will retire at 60, but in fact you can take your money at 55 and some people might want to stay until they are 65 or older. If that is one of the dynamic variables that can be factored into a tool, that is the kind of thing we would like to be able to deliver to people. Then the emphasis is not only on issues like investment risk or whether a nine per cent contribution is enough or whether it has to be 14 per cent, 15 per cent or something else. There are other variables in that same equation and each one of them moderates the other.

For example, an excessive concentration on investment risk then says that your outcome is completely determined by your risk profile rather than by your actual income needs. A risk profile questionnaire for someone who is 30 years of age who says, 'I can't sleep at night if I have capital loss,' puts them into a cash investment that is going to lead them to an adequacy problem. We are trying to get people to understand that there are counterbalancing factors in the quantum of money they will have to put in and how long they can expect to have to keep working before they can retire. All of those things are very individual.

Senator SHERRY—I would like you to take something on notice, because I am sure you would not have the table here. It relates to your earlier comments, Mr Murphy, about the projections through different investment options. I assume they will be after all fees and costs and that they would vary depending upon the investment option. Could you provide us with a copy of that information? I would be interested to see which investment option in your fund, at least, gives the best outcome over X number of years.

Mr Murphy—Yes.

CHAIRMAN—Ms Byrne and Mr Murphy, thank you very much for your appearance before our committee and for your contribution to our inquiry.

Proceedings suspended from 3.25 pm to 3.39 pm

CERCHE, Mr Mark, Chairman, Corporate Superannuation Association

McBAIN, Mr Bruce Lindsay, Chief Executive Officer, Corporate Superannuation Association

CHAIRMAN—Welcome. The committee has before it your submission, which we have numbered 28. Are there any alterations or additions that you wish to make to the written submission? If not, I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr Cerche—The terms of reference for this inquiry are extremely broad. There are a few areas of principal concern to my association. The first is the suggestion that there be uniform capital. Our association rejects that suggestion, as it has consistently in the past. It would effectively eliminate us from the market if it were to be the case. We are also interested in the question of advice. The representatives of UniSuper have just given evidence. Our concern lies at a different level but has the same tenor. The present law, and the view of the law of the regulator, is such that it makes it almost impossible for useful advice to be given by superannuation fund trustees to their members. We support the view that there should be a clearer delineation between personal advice and simple arithmetic because there seems to be a lot of confusion in the minds of the regulator as to what simple arithmetic is and what personal advice is. That is a source of some considerable concern to the association.

The association also supports the concept of the trust as the appropriate mechanism for continuing to look after other people's money; it has been that way since before Magna Carta and we see no particular reason why it should change at this point in Australian history. I have nothing further to add.

CHAIRMAN—In relation to your views on capital adequacy, what provisions do funds have if they do not have capital in terms of providing a guarantee against either a major fund failure or unit mispricing?

Mr Cerche—There are two questions there. The issue of risk to members is what we care to focus on. In our particular model, typically the basic equal representation is complied with. The members are in charge of their own money. There is very little risk of fraudulent conversion. Incompetence is a risk. Most corporate funds seek to outsource the investment function. That is satisfactory because investment managers have unlimited liability. The real risk is the one that you have referred to just recently, and that is the administration risk or the error in unit pricing, which can result in substantial losses. The association has for some time urged similar provisions as to liability be visited upon professional administrators. At the moment the administration company, of which there are very few and it is shrinking, can limit their liability to fees for a year, which is not at all proportionate to the risk that they visit on the superannuation fund trustee. In our view, whilst some limits might be appropriate on the liability of administrators, they presently have the force of market competition to support them fixing very low liability limits indeed. The larger funds can drive a bigger limit but in any event the limit is quite disproportionate to the potential liability.

Trustee insurance is another mechanism for protecting members. Trustees do take advantage of that. The question then is: how much insurance and who pays for that? Of course, it has to be the members in a mutual arrangement because there is no capital. Our answer to the question is that a vigilant trustee is the best protection a member has. The risk of unit pricing is always with us. Our members typically are resistant to that. Administrators are increasingly pushing funds to unitise because it is easier for administrators, rather than fixing crediting rates, which are an approximation of the returns and are relatively foolproof so far as the trustee is concerned, providing they are acting legitimately and honestly, whereas unit pricing can objectively be wrong if there is input or human error, which can be quite devastating, as we have seen.

Senator MURRAY—Can APRA at present impose a capital requirement on you?

Mr Cerche—No.

Senator MURRAY—They can suggest it, though.

Mr Cerche—They can, in their licensing provisions. The legislation was structured so that there was a very clear understanding between the industry and the regulator that in corporate funds and industry funds a capital requirement would not be satisfied; a resources requirement was necessary, and financial resources.

Senator MURRAY—The point I am trying to get from you is that, in the existing regulatory milieu, if APRA felt it was necessary for a fund, or a set of funds, to have a capital provision they could say that publicly and to the funds concerned, and in that sense there would be market pressure for that then to occur. It does not necessarily need a legislative response because it is capable now of being promoted.

Mr Cerche—APRA could theoretically impose a capital requirement as a condition to its granting a licence. Such a condition would be subject to review and appeal. When a licence is already granted it would be a variation to licence initiated by the regulator and it would be subject to review and appeal.

Senator MURRAY—But the question is: why would you want uniform capital requirements if APRA is already capable of applying a capital requirement?

Mr Cerche—We do not want that. We are arguing—

Senator MURRAY—I know you are arguing against it, but the point I am making, for those who argue for it, is that it is already possible to lay down a capital requirement.

Mr Cerche—It is possible, but the understanding within the industry—and I think the regulator accepts this—is that the legislation was passed on the basis that there would be no capital requirement on mutual funds of our type. The legislation would have been opposed much more vigorously if that concession had not been not made at a political level when it went through the parliament. But you are right: theoretically, they could impose it. Again, it would meet with severe resistance from the not-for-profit section that I represent. There are review mechanisms for anything APRA does.

CHAIRMAN—Would you like to enlarge on your concerns about the restrictions on trustees providing advice, particularly also in the context of some of the APRA guidance that has been provided there as well, which we have heard earlier evidence about.

Mr Cerche—The FSR has imposed a regulatory concept on superannuation for the first time—that is, it brought not-for-profit superannuation into the financial services regime. It did so in what, with the benefit of hindsight, has been a very ham-fisted way and it has been continually rolled back. The problem is that you either provide useful advice, you provide information or you refer inquiries to a licensed adviser. For 80 per cent of our membership, the last option is not an option. They simply would not do it.

We can provide information and do it pretty easily. We can provide product information in exempt documents, and we do that pretty religiously. They are complex documents. Being a lawyer, I was offended before, but I have shrugged that off. But, again, that is not good enough. I like the analysis of transactional issues. Largely, members really want to know what they should do: 'Should I salary sacrifice?' Nobody actually advises them as to whether they should or should not, but they can advise them of the consequences if they do. 'If you salary sacrifice, this is what the tax outcome will be to you.' That is a piece of information—that can be provided—but there is a lot of confusion about that.

ASIC, being the regulator here, would say, 'That could be personal advice, because you are telling them the outcome of something.' I just reject that. The next thing they want to know is: 'Should I split contributions with my spouse?' And the answer to that is: 'Not anymore,' or at least not until 1 July, because the chances are if you are male you are four years older and you will get access earlier. The next thing they want to know is: 'What is the outcome of selecting this investment option as opposed to that?' If the question is put that way, it is very easy. The information is, if we look backwards and assume that going backwards it is going to go forwards—and we cannot assume that—the outcome will be two per cent differential over the longer term. The question is whether that is information or whether it is personal advice. Those are the areas of great concern.

Most PDSs will explain what the historic performance of the various investment options has been. Not many of them would indicate what use you make of that, except by saying, 'The past is no indication of the future,' because the regulators say that you have to say that. I am getting on my high horse now, Chairman, and please stop me if everyone is bored. Calculators are simply a method of working out compound interest depending on what assumptions are plugged in. If you are a 55-year-old woman and you want to work until you are 65, then the relevant period is 10 years. I cannot see that if you plug 10 years as opposed to 15 years into a calculator it is personal advice. It is just not. It is simply putting one of the factors in the calculation necessary to produce the compound rate of return.

Senator MURRAY—That is what I meant earlier when I was talking about cameos. They are automatics which apply to anybody in that circumstance.

Mr Cerche—Exactly. And unfortunately everybody on this side of the fence is worried about what ASIC thinks, not what you think or what I think, because it really does not matter what you and I think—it is what ASIC thinks. If ASIC comes visiting you and gives you an enforceable undertaking then you will know the feeling I get. So that is the area where, in my view, it is very

necessary that the parliament create some clarity around these sorts of issues. Because if the expectation is that that is personal advice which cannot be provided except following the current FSR regime, then 80 per cent or 90 per cent of people in superannuation will never get the relevant advice that they need to make simple decisions. It is just as plain and as blunt as that.

CHAIRMAN—You refer to commission based advice as being driven by the intent to sell a particular financial product. What is your general view on commission based advice?

Mr Cerche—Commission based advice necessarily has an impact as far as the person who is providing the advice is concerned, so there is obviously a conflict of interest. You cannot expect a person who has a family to feed to be dispassionate and advise somebody who comes in where there is no product to be sold, because the person is currently perhaps in UniSuper or Rio Tinto, which are very superior funds. If you go into the average planner and get some advice, if they knew their product and they knew your product, they would say, 'Well, you may as well leave now.' But that is not what happens.

They will give some advice and most of it will be bad, as all of the evidence is indicating. For example, they may say, 'UniSuper growth has been at 17 per cent for the last two years; I can get 19 per cent in this product—look.' And they can. In a two-year period they can select a product which has produced 19 per cent. It might be a Hong Kong based futures fund operating in the Shanghai index or something like that.

CHAIRMAN—I think you are being a bit unfair there.

Mr Cerche—Yes and no.

Senator SHERRY—Is it in reality easy to distinguish between a planner providing advice to sell a particular fund or product and the advice that we were talking about earlier, about what to do, level of contribution and level of death and disability insurance? Do you think planners distinguish sufficiently? If they do not, how can we ensure that they do?

Mr Cerche—I do not think that they do do that. I have no objective evidence as to what processes they go through. I have seen their statements of advice, but I am not sure that they focus on those issues. Structurally, most financial planners are associated with financial institutions in one way or another. Their statements of advice can be directly tracked back into that fact. That is unfortunately the position.

CHAIRMAN—That is the same with any product. If you go to a branded service station or car dealer or anyone else, you expect to buy the vehicle that they are associated with.

Mr Cerche—Absolutely.

Ms BURKE—But the distinction here is that a lot of these financial advisers are not branded by the products that they are advising on. I will not use a specific name, but they are branded as something else and you actually do not know the association. The individual a lot of the time does not know that their product is going to be AMP or ING or whatever. But that is who they are there representing. A lot of the time people go to an adviser without actually having that knowledge given to them until after the event.

Mr Cerche—They are obliged to disclose the commissions they receive. I do not think they are obliged to disclose their parentage. There are many different names. The connection is not always clear. Some of them are very clear.

CHAIRMAN—Do you have any information as to the extent to which commissions vary from product to product or in fact is there pretty much a standard rate of commission paid now across products—apart from your Westpoints and the ones that are way out there?

Mr Cerche—They looked good at the time. There are various ways of taking commissions. There are up-front commissions, there are trail commissions, there are advisory commissions and there are exit fees. It is very difficult to get a handle on. You have options within those. Typically you will say, 'The up-front fee is four per cent, but you will not pay that provided you agree that you will not exit for X years, in which event, if you exit within that period, we will catch that up with a reverse entry fee.' They may say something like, 'I will provide advice to you every year and it will be one per cent forever or until you sever the relationship,' if you can. So the answer is that I am not aware of the particular techniques that are used, but I am aware that there are commission based people who are selling product. It has been that way for a long time.

CHAIRMAN—One of the arguments that was put to us was that really that is the only way that people who are making relatively modest contributions or who are in the low-income area can afford to obtain advice. On a fee-for-service basis they would not be able to afford or would be unwilling to pay the fee for providing that advice. So, in fact, commission based advice is a way in which advice is cross-subsidised to a degree.

Mr Cerche—I understand and agree with that. It is not only middle- or low-income earners; some high-income earners will not pay the fee either. They will just wing it. But you are absolutely right: the market forces are not perfect. If people want to get financial planning advice, the way they go about it is their own business, I guess. All I am saying is—and I am saying no more than this—the superannuation funds that I represent are usually at the higher end of the spectrum, they are typically run well, they typically have good investment options available, they directly have higher than average insurance and they typically have employer support and hence have lower management expenses, and, to date, we have been reasonably successful in maintaining our membership. The ones we lose tend to be the senior executives who think they can do better than us. Like the UniSuper experience, they typically come back when they drop the ball.

CHAIRMAN—Are any of your members using or proposing to use a remuneration model for advice based on the funds from superannuation accounts being used to pay for that advice?

Mr Cerche—Typically we say no to that because we do not link into a particular product. One of the advantages of our model is that we are not associated with any particular financial institution and hence we can select the investment strategies and investment managers which we think are most appropriate. We just do not have the facility or the structure which enables a financial planner to tell the member that they should move out of this investment option to another investment option. To my knowledge, no-one has provided that facility in an employer sponsored fund in this country. I might be wrong, but I am not aware of any.

CHAIRMAN—You also refer in your submission to the problem of advisers only being able to make recommendations with regard to products that are on the recommended list. Isn't this a prudent way for licensees to ensure that advisers do in fact have knowledge of the products about which they are offering advice? Given that that is a limitation, how would you see that limitation being overcome?

Mr Cerche—It is not reasonable to expect any person to be expert in everything that is out there. What is reasonable is for people to have knowledge beyond the product offered by the particular person they are associated with. That is reasonable.

Senator SHERRY—Just on this issue—sorry, Chair—wouldn't it be reasonable, given we have only about 300 licensed superannuation funds now, that an adviser should be able to access information on any of those 300 funds if the information is available and provided by the fund? Therefore, in the context of superannuation as distinct from other investment products, the recommended list should be redundant; it is anticompetitive.

Mr Cerche—I do not want to be defamatory, Senator—who is sitting behind me?—but to understand a complex superannuation arrangement involves a bit of effort. To digest the product that UniSuper offers, for example, is quite a big effort. To understand Rio Tinto, Aussie Post, all of these funds, requires an effort. Not all financial planners are prepared to give that effort.

Senator SHERRY—But an individual may come along and say: 'You've got A, B, C and D on your recommended list. I'm in F.' The planner is supposedly a professional—they are licensed—and I assume they would have the capacity, if F is not on the recommended list, to go and have a look at F in order to make a valid comparison.

Mr Cerche—I think they are obliged to.

Senator SHERRY—But not if F is not on the recommended list. In that sense it is anticompetitive.

Mr Cerche—But what they do is say, 'We can't advise you about yours because it's not on the recommended list.' Obviously, any advice that they give has to be flawed. How can it be appropriate advice if they cannot advise you where you are as to the consequences of you shifting? I would argue that they should not be in that position.

Senator SHERRY—But isn't the reality that they then go on and advise you about A, B, C and D?

Mr Cerche—Correct.

Senator SHERRY—Effectively, that is what happens. And who places A, B, C and D on the recommended list?

Mr Cerche—I do not know. I presume the financial planning people themselves select which products they will offer or will not offer or will investigate or will not investigate. Your question is quite right—that is, to what extent should a financial planner be obliged to understand the current investment of somebody they are recommending another product to. I think it is very

important that they do know that. I am sure that our product is at least as good as any other product around.

Ms BURKE—Doesn't ASIC advise that is one of the biggest problems, the exit fund and the 'going to' fund—that there is not sufficient comparison to say, 'Maybe you shouldn't leave this fund to go to another one because this fund is probably doing as good as or better than the one we are recommending you move to'?

Mr Cerche—You stand back and take a deep breath. If you are recommending that somebody goes to fund B on Senator Sherry's list and, over the last five years, that has returned six, eight or nine per cent, it is almost incumbent upon you to find out what your current fund is returning, to see what it is like. So far as I am aware, that is not a current requirement.

Ms BURKE—Do you know whether many people choose to leave your funds, besides people going into self-managed funds?

Mr Cerche—Self-managed funds seem to be our biggest problem at the biggest end. The changes have now facilitated that rush because a lot of our senior members have the ability to put in $1 million—and they do. Of course, they could put it into the corporate fund but, typically, they do not necessarily want to do that. So they set up a self-managed fund and sometimes run it in parallel and sometimes roll it out. Our statistics indicate that the do-it-yourself fund is our greatest competitor.

Ms BURKE—On retirement, do most people stay within your funds and take a retirement option or do they seek advice and switch them then?

Mr Cerche—Again, typically, we have high account balances, and while some of our funds provide lifetime pensions they are dwindling in number. At that time, there is usually a delicate choice to be taken as to whether you pay the management fee or do it yourself. Typically, our management fees, whilst half the retail cost, are still considered by some to be a significant impost.

Ms BURKE—Do you look after the bank corporates and the insurance corporates—say, ANZ and Westpac funds? Are they also within your parameter?

Mr Cerche—The Commonwealth and—

Ms BURKE—The Commonwealth Bank fund, ANZ, Westpac—the corporate funds.

Mr Cerche—Yes, they are in and out of our association, depending on our performance in the last year or so.

Ms BURKE—I am wondering whether there was any conflict of interest with those groups insofar as they offer retail funds versus the corporate funds.

Mr Cerche—They are actually some of our strongest supporters because the people who run the corporate funds within those financial institutions see the benefit of what they have to their membership. Bear in mind that we are not public offer and we only offer it to our employees.

They have an interest in that because they are within the category of people who can participate. Self-interest is a very strong driver.

Senator SHERRY—Where it suits them. I am sure they are all for choice when it comes to the broader public, but not to their own employees.

Ms BURKE—The choice for their employees depends on—

Mr Cerche—We will not slander the banks.

Senator SHERRY—Going back to your comment: a vigilant trustee is the best protection you can have. Can you give us a general oversight—we have had compulsion since 1987—of the performance of the trustee structure. Has it been strong, resilient? Has it minimised theft and fraud, maladministration—those sorts of issues? Is that the basis for why we have had such minimal problems in our system, other than SMSF, which is a different structure?

Mr Cerche—Our trustee structure has been very resilient and very efficient. I know of no system where the basic equal representation rule has applied where there has been a significant failure—not so in the licensed system or where the members are not making the decisions on behalf of the fund. That is where the failures have been in the Australian system, but in the overall scheme of things that has been a very small failure in any event. I would have thought that the system which was devised in 1987 is a very good one. It has performed pretty well.

Senator SHERRY—That in turn is based on the UK common law, which I think—I have a knowledge of history but you have a better knowledge of legal history than I have, I suspect—goes back to Magna Carta.

Mr Cerche—The trust structure is a pure structure and it rests on the assumption that the trustee holds the benefit of the assets for another—which is what any investment product which tracks income and allocates to beneficiaries should do. One of the overriding and strongest features of the trust structure is that it reinforces the no conflict rule and ‘act for the benefit of the beneficiaries and not for your own profit.’ That is why the trust structure is so strong. Where the basic equal representation rule is applied, in my experience the trust structure has been very resilient. The fact that there are 300 funds still in existence, compared with the legislative change which has happened over the last 10 years, is testimony to the strength of those trustees.

Senator MURRAY—That is why I argued that a trustee structure should be an option for people instead of being forced into the single responsible entity and managed investment fund—but I lost that.

Mr Cerche—Yes, you did. I did, as I recall, support you, Senator.

Senator MURRAY—I want to return to the discussion which I had with the earlier witnesses and you followed up on. That is my concern that advice which has been categorised as individual, from a cautious or prudential approach, is in fact general and is in terms of what I would describe as a cameo. A person in that cameo would typically show a set of consequences.

I think it is difficult to determine in legislation the difference between generalised advice for a class of individuals. You are always going to get threshold issues. Do you think we are just being impatient, and that we should allow ASIC and the industry at large to work through these things and become more and more sensible about them as experience dictates? Or do you think we should be looking for a legislative response to allow a little more freedom than is occurring? My concern—I think it is across the parties with people who have an interest in this area—is that we are more involved with form and substance; we are more involved with process and outcomes. People at large are not accessing financial advice which is beneficial to them and which they can understand and relate to, simply because the way it is structured makes it all too hard.

Originally we moved from a situation where we were trying to stop people being given advice for the wrong reasons. I think parliamentarians and policymakers are now moving towards a view that you should have as much advice as possible available to people, and how do you facilitate that. There is quite a long journey to take that way.

Mr Cerche—I would like to think that that evolution would happen. The challenge we have is the concept of an objective set of circumstances which would involve a recommendation. There needs to be a distinction between whether you give advice and whether you give a recommendation. I can advise you up hill and down dale and not give you a recommendation as to what you should do. That is where I think the legislation has gone half a step too far, because it gives somebody the right to say, 'You were giving personal advice without the requisite licence when you gave some information and advice as to the regime which would cause a reasonable person to act upon it.' That is deemed to be personal advice—if you take into account their individual circumstances. That is where I think the legislation has gone a bit too far. I would be quite content if the law was to say: 'You can provide information about your product, you can provide detailed information about your circumstances and the product. But, hey, it's your choice; I'm not making a recommendation to you.' That is where the problem has been, in that particular area. Most trustees do not want to give advice—

Senator MURRAY—The Judaeo-Roman approach to advice, in the legal sense, was literally to say, in the language of the synagogue, 'Well, on the one hand, there's this and, on the other hand, there's that.' That is what advice is. And then the person will choose which hand they relate to. It is an interesting distinction to make between that which lays out options and that which says, 'I have examined a number of options and this is what I recommend you do.' And the law, as you know, does not distinguish between a recommendation of that kind and the advice of the other kind.

Mr Cerche—Correct. I do not think any trustee wants to actually advise a beneficiary what to do because that involves an assumption of liability that that they do not necessarily want to have. But they feel hamstrung in the present regime in that if they lay out all of the facts in a simple way the regulator will say, 'That is advice,' and it is likely to be personal advice if you tailor it in any particular way.

Senator MURRAY—So are you suggesting, in answer to my question, that one of the things the committee should consider if we want to sharpen up on this area is asking the government to examine, in a broader sense, distinguishing between a recommendation offered by a planner to which a remuneration element is attached and advice offered by a planner to which there may or may not be a remuneration element?

Mr Cerche—I think that is a distinction. That was the distinction—

Senator MURRAY—Because a trailing commission can only come from a recommendation; it cannot come from advice in a general sense, as you and I were discussing.

Mr Cerche—No, you would not think so.

Senator MURRAY—That is right.

Mr Cerche—There are some planners who have sought trailing commissions when they have said: ‘You’re fine. We like where you are. We’ll keep you constantly under review. Please sign this.’ That enables them to get a half a per cent per annum out of the account. But that is a recommendation, in a sense; ‘stay where you are’ is a recommendation just as much as moving. My concern with the present situation is that there is no ability for a trustee to provide appropriate information to enable an individual to make a decision without infringing the law. No-one here wants to infringe the law. We go to great lengths to ensure we do not, and that is why we are a bit conservative.

CHAIRMAN—Any further questions?

Senator SHERRY—I would like to thank the witness for the table provided; I found that very useful in terms of laying out some of these issues. Thank you.

CHAIRMAN—On behalf of the committee, thank you very much, Mr Cerche and Mr McBain, for appearing before the committee and for your help with our inquiry.

[4.22 pm]

APPLE, Mr Nixon, Industry and Investment Policy Advisor, Australian Council of Trade Unions

BOWTELL, Ms Catharine, Industrial Officer, Australian Council of Trade Unions

CHAIRMAN—I welcome representatives from the Australian Council of Trade Unions. The committee has before it your submission, which was numbered 72. Are there any alterations or additions you wish to make to the written submission?

Ms Bowtell—No.

CHAIRMAN—I invite you to make an opening statement, after which we will move to questions.

Ms Bowtell—I will introduce the ACTU to you and then Mr Apple will point out the key points in our submission. The ACTU appears here today representing almost two million working Australians who are members of superannuation funds. As members of the committee know, the ACTU has a longstanding involvement in the development of superannuation policy in Australia and the introduction of compulsory superannuation into this country. As the peak body representing unions, our affiliates are parties to awards and agreements which contain superannuation provisions. Those agreements represent almost 40 per cent of working Australians and the awards another almost 20 per cent. So about six in 10 employees in this country have their superannuation arrangements in part affected by industrial instruments to which our affiliates are a party. So we have an ongoing interest in superannuation as an industrial issue as well as from a policy perspective.

Finally, as committee members all know, the ACTU is a shareholder in a number of superannuation funds and is able to directly appoint trustee directors to a number of the funds. For the record, I am a director of one of those funds, AGEST, and an alternate director of AustralianSuper. Mr Apple is a director of AustralianSuper. Although we do not appear in that capacity today, we are happy to bring our understanding of the funds upon which we sit to the proceedings.

Mr Apple—Our submission says that we do not think that new capital adequacy requirements are necessary. We think licensing requirements and prudential regulation will focus the system on prevention, which is most important. We do not see the benefits of trustees becoming public companies.

We think that in relation to advertising in the committee’s terms of reference the most important thing in the choice regime is that you have to have a level playing field. We are already encumbered by the APRA regulations which say that advertising is only available if it is for the retention of members, which we think is a rather narrow definition.

Like other presentations that you have had from IFF, ASFA and the Australian Institute of Superannuation Trustees, we find that a major deficiency in the current system is payment of commissions on advice. We see that as a major problem. We have perused some of the transcripts which show your interest in industry funds and potential conflicts of interest and we are happy to answer any questions about that.

CHAIRMAN—Thank you. Given your view on the issue of uniform capital requirements—you say that licensing and so on is adequate—what happens if something does go wrong either on a unit pricing issue or on a fund failure? How is that going to be dealt with?

Mr Apple—Things have not gone wrong. We have a long track record of that. I would go back to prevention—our experience so far with the licensing process, which is now into the auditing of the IT hardware and software systems, which is the heart of protection and unitisation for both your outsourced administrator and your own systems. Building the systems that will be adequate is again important for prevention. If you are a public offer fund, of course you do have capital adequacy requirements, but they are not uniform. You can either pay the approved deposit or have custodian arrangements.

I suspect that you have heard a good deal from the Treasury officials that, when they look at this issue 18 months down the track, as the government said it would when it released its 2002 decision, they will be looking at the issue that was raised by Mercer's, which is: should funds be mandated to have administrative reserves? At the moment, there is considerable variability in administrative reserves. We have seen some as high as 1½ per cent of assets; we have seen some as low as maybe 10 basis points on assets. So, while the options are there, our view, our policy and our practical experience of the working-through process with APRA is that it not only minimises the risk but also does a great deal of prevention, and it lifts the standards.

CHAIRMAN—Although it does not come under federal jurisdiction, there was a unit mispricing issue with that Western Australian government fund, wasn't there? So it is not quite true to say that it has not been an issue.

Ms Bowtell—There have been issues from time to time. By and large, my experience of them is that they have been dealt with through insurance of an outsourced provider. So part of the risk management process, the RMS and RMP obligations that the licence imposes on funds, is to have a proper risk management plan in place—and, as Nixon said, there is a working-through now in terms of IT. But a lot of that then rests on making sure that outsource providers are adequately insured and that funds have allocated the risk away from members and towards service providers or others. I think most funds have that sort of arrangement in place. It is also, as Senator Murray pointed out, open to APRA to impose some net tangible assets requirement on funds, and it does do that, and that can be met in a number of different ways.

CHAIRMAN—You recommend the prohibition of commissions on superannuation guarantee contributions. What impact would that have on fund managers?

Mr Apple—On fund managers as opposed to financial planners? I think that they would have to shift over to a fee-for-service basis. That is effectively what it would mean. From our reading of the ASIC shadow shopping survey, two or three fundamental issues come out which we question could be resolved by a working-through process. The first is the basic requirement

under the Corporations Act for proper statements of advice. ASIC found that only 20 per cent could be guaranteed to be compliant. The second thing we found in that shopping survey was that, where they were able to quantify unreasonable advice and what the costs of that were, they were able to calculate in 23 specific cases what the losses were to individuals. Seventeen of the 23 cases involved loss to retirement benefit of between 10 and 38 per cent. They also found that uncompliant or unreasonable advice provided by retail funds was about 39 per cent of the advice that they investigated.

Our understanding is that ASIC is looking at industry funds as well as retail funds in terms of switching of advice. Both types of funds have had to provide ASIC with substantial case material so that ASIC compares the advice that is given about switching. In relation to a previous comment, we were certainly under the impression that when ASIC does look at switching you have to know something about both fund A and fund B to recommend why you should go to A rather than B. We acknowledge, and we have read on transcript, this notion of: could we not just tell the consumer that there is a franchisee, that there is an agent and then there is an independent—wouldn't that be a start?

Senator MURRAY—What you would call a nomenclature argument.

Mr Apple—It would be a start, and also putting up in red letters—I think was one of the comments—where this advice is coming from and what you will be available for and so on and so forth. That too is a possibility. We are also aware of ASIC's advice to this committee that they think that there is a consciousness within the industry that this is a problem and that a working-through process would be likely to help resolve it. We get back to the point that it is not the financial planners and it is not financial advice, it is the conflict of interest that goes into it with commission. We are not sure about the argument that the financial advice applied to the high-income earners necessarily subsidises the low-income earners. If you farmed this out as a consultancy to someone like Access Economics to do an incidence analysis, the first thing they would do would be to compile lists through probability analyses of winners and losers. Secondly, they would look at how much the winners and losers won and lost through good advice and bad advice.

While I take the point about how you get affordable financial advice to low-income people, we think that the fee-for-service model is still more likely to provide a net benefit compared to the commission based advice. We acknowledge however that, when we say we think that commissions should be eliminated from super guarantee contributions, there is the logistics of how you implement that system. First of all, presumably, you have to separate out superannuation advice from other types of advice, but we do not for a minute to pretend that we have some sort of a blueprint that we can show you on what the perfect model for doing that would be.

Senator SHERRY—If that were to happen, would you want to effectively retrospectively remove existing contractual obligations? There are existing contractual obligations.

Ms Bowtell—As Mr Apple said, we do not have a blueprint for it but our policy position is that no commissions should be paid on advice about the SG contribution. It is certainly not about taking the livelihood of the financial planning industry away. It is about saying that a mandatory employer contribution should not be eaten away by commission based advice, constant

switching and so on. There are other areas of financial planning—voluntary contributions and so forth—where there would still be a role for financial planning.

CHAIRMAN—So what should be the best advice for the SG?

Ms Bowtell—It should be fee for service. Then we look at different models about how members might be able to pay for that, whether it is an up-front fee or whether there is the opportunity for that fee to be paid out of accounts. A number of funds have looked at that model.

CHAIRMAN—That is just commission in another way.

Senator SHERRY—It would have to be a specific authorisation for a specific limited advice wouldn't it? It would be a fee debited against members account.

Ms Bowtell—Yes, and very limited.

Mr Apple—This also raises the issue about what sort of a ceiling you would have to put in place. I think IFF in their submission said to you that the ceiling would have to be no more than $500. They also suggested that it would have to be approved financial planners, so there would be a qualification schedule attached to how it would work.

CHAIRMAN—How important do you think advice is for the SG component?

Mr Apple—The perception we have is that in the market today most of the advice comes for elderly Australians. Most of the advice does not come for young people and certainly does not come for part-time and casual workers. Most of the advice is so basic that it should be able to be satisfied by what most organisations offer in the free introductory advice about the funds and the information that is provided. It starts to get a bit murky when people are perhaps over 45 and looking for more advice. That is where you are looking at everything from state planning down to superannuation. We think the super component may get muddled in with some of the other forms of advice that are given.

We see problems there. We are particularly concerned about the over-45 group. Our analysis of end-benefit taxation on super suggests that perhaps 70 per cent of Australians over the age of 45 will not benefit. They are not going to be over the $135,000 tax-free threshold because they are basically the generation that did not have super. Low income earners can be medium income earners who have not had super for some time and who have not built up their amounts. So there is a concern not just about whether it is low or medium income earners but about the account balance. These are the people who fall into that group.

CHAIRMAN—In earlier evidence we heard that that about 90 per cent of industry fund members are in balanced funds. What proportion of those would be younger people?

Ms Bowtell—It is not just age based; the account balance size makes a difference as well. Both older members and members with higher account balances might make member investment choice. Within funds there are some members who make constant member investment choice and a large number who do not change at all. The question for me is: what conclusion do you draw from the fact that a large number of members are in default funds? You are invited, in one

of the submissions, to draw the conclusion that those people would change if they were given more advice. But you could draw an alternative conclusion: that the balanced plans are appropriate plans for those people and that is why they are in them. I am not sure that just weight of numbers draws you to one conclusion or the other.

CHAIRMAN—You would think younger people ought to be in growth funds rather than balanced funds by the time they get to retirement age.

Mr Apple—The nice thing about a balanced fund in terms of people moving in and out of the work force is that the balanced fund over 20 years, from memory, has performed pretty close to the growth fund, which has the larger exposure to equities. Within the growth option there are also many choices and we are seeing some evidence, albeit at the margin, of people exercising their choice within various options. For example, a certain percentage now will take the option of investing in the ASX 200 and we will move that into their account. We do see some evidence of older Australians, who are fund members, moving more towards the capital guarantee at the end of their career. I suspect that with the new arrangements that have come in with the simplifying super and changes in taxation, effectively you are going to see a system where you have your card and your account balance and changing investment options within that. We will probably see more of that as well.

Senator SHERRY—On the investment choice menu, the bottom line is that there has to be a commonly accepted default investment fund, doesn't there? In any system right around the world that is the experience: you have to have it.

Ms Bowtell—The design of the default fund is supposed to suit anyone. It is meant to be a 'set and forget' option—that is why it is the default fund. You are meant to be able to enter it as a young person and leave it at retirement and have had sufficient return on the investment. Now perhaps someone going for growth in the early stages of their life, switching into the balanced fund in the middle and then a more stable option at the end would end up with the same account balance. But the idea of the default fund is to try to make it a set and forget fund for people who do not wish to exercise that choice.

Senator SHERRY—Going back to the issue of commissions, is it possible to distinguish between a commission for advice and a commission for selling a particular brand or product? It seems to me that everything on commission is advice, whereas I draw a distinction between selling a product and providing genuine advice within the product over time.

Mr Apple—If you could distinguish it in theory and design with a regulatory regime that operationalises that, it would certainly be better than what we have today. Our concern would be about where you get your information about the financial planner that you choose. Quite often it is by word of mouth. So you end up with a financial planner and once you are in the room is the difference between advice and selling a product crystal clear? How could you make it so crystal clear that the conflict of interest provision would be nullified, if you like?

Senator MURRAY—Wasn't the indication from the earlier witness that the easiest way to determine that is distinguishing between advice which offers you options and a recommendation which suggests something to you as a course of action? Isn't that the easiest—

Ms Bowtell—My mind was turning to the distinction that we try to draw between information and advice under the current regime and how difficult it is to draw that distinction in a practical environment. Although the regime has been improved, funds and fund staff struggle with the most recent iteration of the distinction between general advice and personal advice all the time. Again, drawing a line between advice and a recommendation may well mean that you find yourself with the same grey area where it is difficult for people to draw a line in a practical environment, when they are in the workplace providing information about a particular fund or perhaps at a call centre answering the calls that come in about a particular fund. It sounds attractive but until you saw the regime I am not sure whether it would work or not.

Senator MURRAY—Do you think it is worth the committee suggesting that the distinction being examined in greater detail and thought through because of its attraction? To indicate options or advice, which is personal to you but which offers you a range of options, is capable of having an immediate fee-for-service framework. It is difficult to attach a trailing commission to that, whereas a recommendation which says, ‘Go to product such and such,’ may have the consequence that you will pay for that over the lifetime of the product. Does it deserve greater exploration or do you automatically dismiss it?

Mr Apple—We have a policy that says fee for service is better. It would be worth examining it to see whether it passes the ASIC test about the practical limitation of disclosure. If you can get past the practical limitation of disclosure to the actual conflict of interest that is inherent in the relationship between the commission based selling agent and the ultimate parent company, then that is the ultimate test.

Senator SHERRY—I note that you recommend unpaid SG be covered by GEERS. Do you have any idea what the cost of that would be?

Ms Bowtell—No, but we could take that on notice and get back to you on that.

Senator SHERRY—Is that because it is a statutory obligation?

Ms Bowtell—It is also because we see it as a component of wages. Superannuation has always been, in our view, a component of wages. It started that way and the SG continues to be a component of wages, in our view. It should not be treated differently.

Senator SHERRY—On the issue of the advertising, which seems to have got some people quite agitated, my recollection is that credit unions who are profit for members, not-for-profit, can advertise. Why would we then prohibit anyone in a thriving capitalist market based economy from advertising? If you follow the logic of the thriving capitalist based economy—which I do not sometimes—it would be very difficult for a person, philosophically, to ban advertising.

Mr Apple—I think you have to have a level playing field on advertising. I was struck by some of the committee’s deliberations about disclosure of advertising—and you are quite right that, if you go to the financial accounts that organisations lodge with ASIC and APRA, it will be buried within other operational expenditures, so you have to look for that usually, in the case of industry funds. I think you will find that the people behind us who are presenting tomorrow are quite vocal and up front about their sponsorship and their advertising. I think most fund magazines

have either the chairman or the CEO pointing out: 'In a choice environment, that is why we have gone into the advertising campaigns that we have.'

Senator SHERRY—I know it is in the annual accounts. It seems to me that it is very unlikely that, at the end of the day, people would reasonably conclude that you ban advertising. I just cannot see, philosophically, how you could subscribe to that in our type of economy. But wouldn't it be reasonable to remove the direct advertising out of the accounts, which are in a sense another step removed from the annual report, and put the cost of advertising and promotion as a category in the annual report?

Mr Apple—APRA is in the process of revisiting how it quantifies and gets information about the operational expenses of funds, because up until now I do not think it has been able to put commissioned costs into its calculations.

Senator SHERRY—They described it, as of last week, as being as difficult as landing a man or woman on the moon.

Mr Apple—Yes, I think that is probably right. When I talk to our marketing executives in the funds, they say, 'What we classify as advertising, promotion and communication with members may not be identical to what another fund classifies as advertising, promotion or communication.' That does not mean, like fees, that we could not get it down. It gets difficult in some areas. The ATO will tell you that a PDS has three functions: marketing, disclosure and protecting the liability of the insurer. Therefore, what do you apportion to legal expenses? What do you apportion to advertising? But I know what you are getting at—that is, people may want to know what the overall advertising spend is. So it is something that APRA would have to look at.

Senator SHERRY—If it comes to that—I read a lot of funds' annual reports.

Ms BURKE—You need to get a life!

Senator SHERRY—Yes, I do—it's bedtime reading! But do you think there is an argument for a standard template set of accounts in an annual report so that we are able to compare like with like expenses and costs?

Ms Bowtell—We are not opposed to increasing the disclosure of the way funds use members' money to administer the funds. What we would say is that, if it is going to apply to superannuation accounts, fund accounts, it should apply across the board—that there should not be necessarily a singling out of this industry.

Senator SHERRY—I would not disagree with that. I am sceptical about the degree. It would be useful, but just seems to me that, in order to allay what I think are the unreasonable fears of some people in this area, about political donations, for example—routinely I have seen just wrong comments about political donations—at the end of the day, if you had a category 'political donations', people could see for themselves that some of these allegations are just not right.

Ms Bowtell—Having a template set of accounts may or may not assist. The accounts really should work for the audit committee and the board in understanding how the fund is managed and for the management of the fund. That is their first purpose. They then have to work for the members and then perhaps work for external agencies which want to compare fund with fund and so on. But the first thing they have to do is work for the board, in terms of being able to categorise expenditure and make sure that that works in such a way that the board is happy.

Senator SHERRY—Yes, but I am sure that APRA can issue another guideline.

Ms Bowtell—I am sure they can.

Senator SHERRY—Going back to trustees and the trustee requirement to examine accounts, I am sure that the accounts presented to the trustee meeting are considerably more detailed and regular than those which are presented in an annual report.

Mr Apple—Also, when trustees are doing their business plan and their budget for their business plan, the operational expenditure for the next financial year, your marketing executives will break it down into all different categories. If you wanted to get your template to the extent that it would assist, APRA would need to ensure that they were comparing like with like in terms of the breakdown. That would be the difficulty. I am not saying that it is impossible; I am just saying that it is a logistic issue.

Senator SHERRY—As I say, I just think that, in terms of undercutting some unreasonable accusations in this area, it might be useful. The other area I was going to raise was executive remuneration and trustee remuneration. Again, some reports disclose them and some do not, to varying degrees. Again, it would just seem reasonable to me that that is not an unreasonable set of information to have disclosed to the members of the fund.

Ms Bowtell—Certainly not. The ACTU certainly would not oppose the disclosure of trustee remuneration. In fact, my understanding is that, if you went to the websites of most of the industry funds to which we would appoint a trustee director, you would be able to find fairly easily the level of remuneration to the trustees, although not necessarily to senior management.

Senator SHERRY—That is right. And most disclose the trustee remuneration in the policy—that is right—but not all. This is super funds generally. I am not just talking about industry funds; I am talking about corporate funds as well. I just think that is a reasonable set of disclosures to have.

Ms Bowtell—Yes.

CHAIRMAN—What is your view on the suggestion that, given that a lot of industry funds now are public offer funds and therefore they are not limited to the members or the employees or employers of that particular industry, there should be trustees appointed to represent those other members of the funds outside the traditional employer-employee representative groups?

Ms Bowtell—I think you had a fairly good answer on the benefits of the representational trustee structure with the previous witness, so we would probably just pick up their comments there in terms of how well it has served the superannuation industry over the last 25 years—and

it has served trusts for a long time. We think that that representative trustee structure has worked well. In the move of a number of industry funds to public offer, I do not think the ones I am aware of have changed their core membership in any particular way. At the moment, they still operate largely within the industry that they were set up to serve. It is following members who leave, which is a small proportion of their members at the moment, so we would not see any reason at this stage to review the composition of the boards. If the membership were to change significantly over time then you would have to make sure that the trustee board was truly representative of the members of the fund, but at the moment I do not think that the movement in the funds that I am aware of has been significant enough to say that they have spread outside. Overwhelmingly, the bulk of their members—and the employers with whom they deal, in the same way as the members—would still be within the industry that they were set up to serve.

Senator SHERRY—Just on this issue, though, I have noticed that an increasing number of funds have taken to having an independent trustee or trustees from outside the organisational groups of the employers and employees. That is a fairly common feature now, isn’t it?

Ms Bowtell—A large number have one independent on the board; some have more, yes.

Mr Apple—One of the things about the working-through process on the APRA licensing arrangements is that some people seemed to think it all ended on the day you got your police check, handed in your CV and were declared to be fit and proper. Our experience—and I suspect that, from a legislator’s point of view, this is good news for you—is that a good regulatory system is one where the interaction between the regulated and the regulator raises the standard. We are finding, in terms of issues arising about the skills and qualifications of the trustees that we should have going forward, that it is becoming a bigger issue. It is becoming a bigger issue, because it is one thing if you are a small fund and you have to do all of the audit committee’s work, the investment committee’s work and the nomination and remuneration committee’s work at the one investment table, so who you put there may have one set of requirements. If you are becoming a much larger fund and you have a separate investment committee with investment staff, numerous financial advisers and the like, you may start going to arrangements like those of Paul Costello, who was recently appointed to be CEO of the Future Fund. When he was in New Zealand, he set up a panel, an investment advisory group, that gets a broad global view about access to investment. So I think this issue about not just independent directors but also the skills set you are looking for for your board is something that the regulatory process and just the changes in the commercial market are forcing us to address.

Senator SHERRY—In fact doesn’t one of APRA’s guidelines—and I forget which one it is—examine the actual range of expertise and the skills set of the trustee as a whole? They have not named funds, but I am aware that they have made suggestions and given guidance to some funds to expand their level of expertise in quite a number of sectors.

Mr Apple—We are now required to lodge our training plans with APRA, which has got just about every fund looking at what training is going to be required going forward. I think one of the committee members on transcript said, ‘Are we heading towards the day of the professional trustee?’ I hope it is not coming to that, although I note that some of us are spending about 40 per cent of our time on these issues because life gets very complex in large funds.

Ms Bowtell—From the ACTU's point of view, the funds we appoint have certainly taken the fit and proper person requirement seriously. All of those funds have been in contact with the ACTU since the obligation was imposed on them, and they advised us of their policies, their induction requirements and the ongoing training requirements that they impose on trustees. On the few occasions since then when there has been a requirement to reappoint a trustee or to appoint a new trustee, the CEO or the board chair has been in touch with the ACTU to discuss their requirements with us. So certainly, in terms of the regulatory regime, funds have taken it seriously when they have talked to us in our capacity as nominating trustees, and certainly the ACTU has taken it seriously and also takes the responsibility of appointing trustees seriously.

Ms BURKE—There were discussions at other hearings about the relationship between some funds and fund service providers—the interlinking and transparency of relationships and, although it was not said, the issue of conflict of interest at that level. What is your view? Have you looked at the transcript and seen those comments?

Mr Apple—We have seen those comments and would make several comments in reply. First of all, the requirements of reporting to ASIC and APRA in our financial statements are that we have to document those transactions. We have to make it absolutely clear in our PDS that we have an investment in members equity or that we have an investment in our administrator or that we have an investment in part of IFS. That is at one level.

The real conflict of interest is: how do you, in the boardroom, deal with the fact that you have an organisation that you have an investment in—that is, in providing a product—and you have an organisation that you do not have an investment in that is a competitor that is providing a product? Firstly, to what extent does anybody who is a director in that organisation stand back on it; and, secondly, do you go out to tender and do you give full and fair opportunity to get the best result for members? I think in the fund that Cath and I have experience with, first of all, some of our ASIC consultants and advisers have an investment relationship in it and some of them do not. We feel that the ones that do not have an investment relationship provide very good advice in certain areas and we want to have them. When it comes down to a competitor's product with an IFM product, we just tell them that we will choose whoever has the best product in terms of returns post tax and fees and provides access to the investment opportunities that we want.

In any organisation there is always going to be the question about Chinese walls and where you draw the line. My particular experience is that as financial services organisations get larger and more complex—and we do live in a world of excess liquidity where it is very hard to get access to opportunities—you look to where you can get the best opportunities and the best advice.

Senator MURRAY—Does the ACTU have any dealings with the Australian Accounting Standards Board?

Ms Bowtell—Not as the ACTU, no. Sadly, when you sit on some audit committees you have dealings through your auditor with these things, but not as the ACTU, no.

Senator MURRAY—The issues that people are sensitive to with respect to not-for-profit organisations are quite common whether it is a church, charity, community organisation or super fund—the issues of management costs as a percentage of revenue; the issues of advertising and

sponsorship; and the issues of remuneration and so on. The Australian Accounting Standards Board is an integral part of Australia's support, which it has applied, of international accounting standards. One of the things they are seeking to do is initiate a different standard which takes into account the special circumstances of not-for-profit organisations. I think they are close to an exposure draft on that. Bearing in mind that by and large the proper principle you outlined is that disclosure and accounting requirements should be common—advertising and sponsorship, for instance, is an item—I would suggest that you contact them to discuss this issue in the broad and see if you can make any input.

The whole purpose of the current regulatory movement in Australia is not to do away with enterprise or industry specific regulation where it matters but to minimise it so that you have common principles. I would be concerned if governments were to address the advertising and sponsorship area—and notice I keep adding sponsorship because organisations like Medibank are big in sponsorship and it is an issue. Those kinds of issues need to be developed from a principled basis.

Ms Bowtell—Thanks. I will take up that suggestion and contact them.

CHAIRMAN—Thanks to both of you for your appearance before the committee and your assistance with our inquiry. Is it the wish of the committee that the supplementary submission be accepted as evidence? There being no objection, it is so ordered.

Committee adjourned at 5.02 pm