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Official Committee Hansard

JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Reference: Structure and operation of the superannuation industry

TUESDAY, 6 MARCH 2007

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JOINT STATUTORY COMMITTEE ON

CORPORATIONS AND FINANCIAL SERVICES

Tuesday, 6 March 2007

Members: Senator Chapman *(Chair)*, Ms AE 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 AE 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

Committee met at 8.59 am

BEASLEY, Mr Kevin, Chief Executive Officer, eo Financial Services Pty Ltd, appearing for Professional Association Superannuation Ltd

FISHER, Mr Ross, Chair, Taxation and Superannuation Committee, Recruiting and Consulting Services Association

CHAIRMAN (Senator Chapman)—I declare open this public hearing of the Joint Committee on Corporations and Financial Services inquiry into superannuation. On 30 June last year, 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 this 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 ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer a witness may request that the answer be given in camera. Such a request for in camera hearings may also be made at any other time. The committee has before it your submission, which we have numbered 56. Are there any changes or alterations that you wish to make to the written submission?

Mr Beasley—No.

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

Mr Fisher—I will speak on behalf of the RCSA. By way of background, the RCSA is the peak body for the employment services business. As such, the RCSA represents employment agencies and recruitment businesses of one type or another that largely represent the casual workforce in Australia. The spread of industries covered by the RCSA is very wide. It covers the white-collar area, the blue-collar area, medical and teaching. As the casualisation of the Australian workforce tends to increase, so do the types of industries represented. There is a great deal of flexibility in the contemporary workforce.

The RCSA was very heavily involved in the development of superannuation in the early 1990s, initially in the awards superannuation issues that RCSA and its members faced, and later of course with the superannuation guarantee. The concerns that we had were that we were looking for a fund that could look after a highly mobile workforce working across a very large number of industries in which people were regularly changing jobs and needed to have superannuation payments made for them in a reliable manner. The RCSA made approaches to a

number of existing industry funds with a view to finding a fund that would accommodate our needs, and we were unable to do so. This was largely due, I think, to the recognition of the small balances that were likely to accrue, particularly under the award superannuation regime where the actual rate was quite low. Subsequently, the RCSA was involved in the establishment of the Professional Associations Superannuation Fund and that fund has been particularly successful and has been one of the underpinning success stories of the RCSA's development as a representative of its industry.

We have supported Professional Associations Superannuation Ltd in analysing the responses to this inquiry, and we really do welcome the opportunity to be involved. Our view of superannuation in Australia generally is that the respective parties have done a very good job. We think superannuation works pretty well. We have some comments that we would like to add to the general reference points that have been raised but, in all, we have consensus with many of the issues on the table, and with the other respondents to the inquiry.

What I would like to do, if I may, is step through the areas in the terms of reference where we do have consensus and then I will ask Mr Beasley to talk on those areas where we would like to add additional comments as to the terms of reference that have been put before us. I will step through them briefly. On term of reference 1 we have consensus. We concur with the recommendations made by the other respondents. On term of reference 2 there is consensus also. As for term of reference 3—APRA standards—we would certainly like to make some comments on that area. On term of reference 4—financial planning—we have some comments that we would like to make. There seems to have been quite a variance in the types of reports and responses that were made. On terms of reference 5 and 6 we would like to make comments.

On term of reference 7 there is a comment to be made. On term of reference 8 there is no further comment. On term of reference 9—compliance costs—we have some brief comments that we would like to make. On term of reference 10 we have some comments to make. As to term of reference 11, we really think there is clarification required. On term of reference 12, we generally agree that the consensus seems to be supporting that 'not for profit' is understood. As for term of reference 13, we do not see that as a priority at this stage. On term of reference 14, we believe that there is a tool to handle that particular area. We will make comments on that. On term of reference 15, the only point that we would make is the increasing need to get qualified directors. We will talk briefly on that one if we may.

The other issue that we would like to talk briefly about is the potential for a concessional tax consideration for small-balance members over 45. If I may, I will ask Kevin Beasley to talk about that issue. By way of finalising this, we have spent quite some time analysing and tabulating the various responses. Should the committee wish, we would be happy to table that document for further consideration.

CHAIRMAN—Please do. You may table that now.

Mr Beasley—Yes, Chairman. It is probably easier for you to have a soft copy rather than a print-out. The document follows each one and adds a commentary at the close. If it is appropriate, we will send a soft copy through to you.

CHAIRMAN—Yes, please.

Mr Beasley—I will comment more particularly on some of the terms of reference in terms of our analysis of what the industry has generally said. I refer to term of reference 3 as to APRA standards. We note that most of the respondents generally agree on and appear to be comfortable with the APRA rules. They acknowledge that they are constantly evolving. However, one point that we do note—and this is from our own experience—is that most people's comments were about ASIC and FSR, rather than about APRA itself. Perhaps that was not included in the terms of reference per se of the committee, but that might be worth noting. In terms of ASIC, the concerns are really about the problems that some sectors of the industry have working under its regulations. Similarly, we believe that, and most of our concerns are in relation to those issues.

In terms of the role of financial planning, we covered the issues in our submission. Reviewing those comments relative to what the other respondents have suggested, we believe that, while the reforms have generally gone a long way towards addressing the issues raised—and this is looking at them relative to the way that the others have been analysed—we acknowledge that there might still need to be something done in relation to the prohibition of commissions on the superannuation guarantee. We support the concept of specific product advice. We believe that members should have the ability to pay for financial planning advice out of their account balances. We believe, similarly to the rest of the community, that there are problems with lengthy SOAs. We have very strong support for a much abbreviated, short-form, executive summary style statement of advice that is to go even further than the current proposed reforms. So in relation to financial planning we believe there are some additional issues that the committee should look at.

Moving on to references 5 and 6, member investment choice, there has been a fair debate in the industry, and the industry has moved on, particularly because APRA itself seems to have moved on in its interpretation. However, we concur with most of the other respondents in that the trustee's role is to choose the investment menu for the fund and to manage the investments to support that investment menu. Trustees should not be required to interfere in a member's choice of investment, no matter how inappropriate that investment may appear.

Senator MURRAY—You say that because a trustee is a trustee, not a guardian. In other words, they are not standing in place of somebody.

Mr Beasley—Precisely. I think too that the concept of the trustee as it applies to superannuation needs to be understood in perhaps a different way than the traditional approach in relation to a trustee. In relation to reference 7, SMFs, our submission and others have suggested that one control device that might be appropriate—some people do take up SMFs that are inappropriate—is to suggest a minimum account balance. We have suggested $100,000; others might suggest $300,000. One way of monitoring and controlling the issue is to have a minimum account balance that would be applicable. In relation to reference 9, cost of compliance, the major problem is duplication, which in turn increases costs. Many of the submissions have suggested, as we have, that the best solution is a single regulator bringing together APRA, the superannuation related functions of ASIC and the SMF role of the ATO. We support that thrust generally. Our belief is that the ATO should be responsible for tax only in respect of superannuation.

With regard to reference 10, the appropriateness of funding arrangements for prudential regulation, once again a variety of comments were made. Basically, in our view this comes down

to an equity issue. Funding should be proportional to the risk profile of the fund, and that is what we stated in our proposal. In regard to reference 11, costs of advertising, I think the market and the understanding have generally moved on. Advertising is generally accepted by everybody, provided it is in the members' interest—for example, the economies of scale that benefit members. We believe all advertising costs should be fully disclosed and justified in the disclosure documents of the fund. Finally, most market players acknowledge that in a competitive environment advertising is necessary. We concur with that view.

In terms of the understanding of the next main point, which is reference 14, compensation, our submission suggests, as do some of the others, that the unpaid superannuation guarantee in the cases of insolvency should be included in GEERS. We strongly support that for the consideration of the committee.

Reference 15 contains a variety of different points raised by various people. In our particular case we note that some parties have raised the issue of equal representation rules. In our own experience, we believe that the committee should consider the issue of equal representation rules and how they can be modified to allow for the need to appoint experienced directors with relevant competency skills. We acknowledge that APRA have some broad rules in relation to 'fit and proper', but we believe some further work is required to develop the high level of professionalism required at the trustee level.

At least one of the submissions was talking about the inequity that currently exists in relation to taxation, even after the latest series of changes. Although we did not cover it in our particular submission, we would like to support that concept—that is, that there should be a tax concession for those people aged over 45. Rather than a blanket removal of contribution taxes for that period, we would suggest that perhaps it is removed for those over aged 45 with balances of less than $200,000. We believe it would be administratively simple but, more importantly, more equitable than a removal of the contributions tax for all members over aged 45. Our material provides detailed submissions in relation to a range of issues. What Ross and I have tried to cover is our analysis of the other submissions and where we feel emphasis is required to reflect what we have put forward or where we have revised our commentary after understanding what others have put forward.

CHAIRMAN—Thank you for your introduction. Can you explain how your proposal for compulsory insurance to protect members against financial loss would work as against the introduction of uniform capital requirements?

Mr Beasley—This is reference 1 in relation to the trustee structure?

CHAIRMAN—Yes.

Mr Beasley—The current situation that arises whereby trustees can insure for events seems to be adequate in most instances. We propose that that be extended and covered automatically.

Senator SHERRY—Just on the same issue, could I clarify what sorts of other financial losses—we are not looking at compensation in the event of theft and fraud, which is covered by a separate mechanism—do you consider should be covered that are not currently covered?

Mr Beasley—The problem with a lot of these things is that it is hard to anticipate what issues might arise, but there are issues in terms of interpretation of insurance. In the past I think some funds did get insurance wrong. Should the rest of the members in the fund have to pay for a decision that was made four or five years previously? Certainly, issues of unit pricing are endemic in the industry, which might require some understanding. Unfortunately, trying to predict where the problems will arise is always difficult. If we knew where they were, we probably would take action against them.

Senator SHERRY—Accepting your concept, would it not be more cost effective if a fund had a modest reserve to cover things such as unit pricing, for example? If you pay for insurance, I know what will happen: the provider will make a dollar out of it, and I accept to some extent that is inevitable with the current trustee insurance. But what about some sort of modest reserve to cover those sorts of eventualities? I understand a lot of funds have reserves which they can use for that purpose.

Mr Beasley—Our particular fund does use reserves. I personally am a strong believer that reserves are a contingency. However, there is a lot of argument in the industry generally that reserves are not necessarily equitable, so there is a trend of moving away from reserves.

Senator SHERRY—In terms of the equity issue, is that not because reserves are sometimes used to smooth out the rate of return or the declared earnings rate?

Mr Beasley—Besides that, there are a lot of cross-generational issues that create the issue of reserves, so there is quite a significant debate. We believe in the basic concept that there are two options in providing for this outside of the fund: one via insurance and one via some government initiated levy that would apply across the board. In my mind, the second probably has more risk attached to it than does the individual fund being assessed for its own risk and paying an insurance premium along those lines. I am in favour of the insurance primarily because of the cross-generational transfer. It might happen only once in 40 years, and suddenly the members in that fund at that point in time have to bear the very significant costs.

CHAIRMAN—Do you know what it is likely to cost to provide this insurance?

Mr Beasley—For the current PI type of insurance, you might be paying $100,000 for a fund of $1 billion, so it is a relatively modest premium compared to the potential smoothing of the outcome.

CHAIRMAN—You also suggest in your submission that using account funds to pay for advice may contravene the sole purpose test. Have you received advice to this effect? Are you aware of funds that are using or planning to use this form of remuneration?

Mr Beasley—Like many things, it seems to depend on exactly how you go about the process as to the outcome. There are funds that have had advice that it is appropriate to debit members' accounts when it is very specifically and clearly in relation to superannuation. So it depends on the detail.

Senator SHERRY—Are you aware of any ruling from APRA on this?

Mr Beasley—Not personally. There may be.

Senator SHERRY—In the past I have raised the issue of salary continuance insurance and whether or not it is valid within the sole purpose test. They give it the tick-off. That can be fairly high-cost in terms of a member's account. It is certainly more costly than TPD. I wonder, given the cost here, whether or not it is going to be a problem. It perhaps would be interesting for us to clarify with APRA when we see them.

Mr Beasley—The thrust of our submission is that we see financial planning as having gradations moving forward. The current financial planning market is very much bespoke; it is very much about an individual solution for an individual. For the sort of member in our fund, we anticipate that a lower level of advice and a lower level of commentary are all that is required. That is why we have quite deliberately tailored our submission along those lines—to recognise that we have to move away from something that is going to cost $3,000 to get a level of advice that satisfies the relevant regulators.

Senator SHERRY—Effectively—and we discussed this yesterday—you are looking at forms of limited advice. There may be particular advice on level of contribution but it is not ongoing; it is once-off. It is the same with death and disability insurance and perhaps investment advice. So is your argument then that there is no need for continuity of advice on everything every ongoing year?

Mr Beasley—I am not a financial planner, but that is my view. I am sure the financial planners would take a different view.

Senator SHERRY—I am sure they would, but I concur with your view.

Mr Beasley—For our membership, issues like that are once-only and are particularly relevant. It seems to me that, if we want to be able to provide our membership with that sort of advice, it is appropriate to debit the modest amount against their account.

Senator SHERRY—Do you provide financial advice in any form at the moment?

Mr Beasley—No, we do not.

Senator SHERRY—Have you looked at this as an issue? Some of the funds with whom we have discussed this either have done it internally, in the case of UniSuper, who have a licence to do so, or have bulk purchased advice on contract.

Mr Beasley—There are members who may be seeking financial planning advice and there may be names that we are happy to refer members to. We have focused our efforts on member education, but we are finding that our efforts at member education are being complicated unduly by the outcome of constantly hitting against this definition of personal advice. Once you head over there, life becomes too difficult, too complicated and, for our membership, far too expensive.

Senator SHERRY—Just on this issue, I noticed you argued in the submission for a national database to simplify comparisons between funds. What struck me about the current arrangements

in respect of fund advice, as distinct from internal advice within a fund, is the authorised list system, where a planner can only recommend from an authorised list and the entity that they are employed by places the products on the authorised list—which effectively restricts their ability to recommend beyond the list, for obvious reasons. It just seems to me that, in the case of super, that is not particularly relevant anymore, given there are only 300 superannuation funds. It is a big number, but they have all been thoroughly licensed; therefore, why should we have an authorised list system in the case of superannuation? Planners should be able to access the required data on a fund to make a recommendation on any fund if they want.

Mr Beasley—I concur with your assessment that APRA itself provides some of the oversight in relation to the superannuation funds. It might still be necessary, however, to have that central database of fund comparisons, because fund comparisons at the moment tend to be done by the research houses, such as SuperRatings, which are effectively funded by superannuation funds or funds managers. I think there are massive conflicts of interest that flow from that situation. Having an independent party, a truly independent party, comment and provide an analysis is a preferred outcome, to my mind, and it is complementary to what you are suggesting.

Senator SHERRY—I can go to the web and look at most fund annual reports at the moment—although some are not accessible—and go through the information and, I think, pretty much evaluate anything you would need to know about a fund, with a few exceptions. But APRA holding that information in a consolidated form, where you can quickly make analysis judgements about levels of death and disability insurance, investment options, fees and those sorts of things—is that what you would argue should be held?

Mr Beasley—Yes. But, separately, some members are more interested in the lowest cost for administration, the lowest cost for funds management. They might be interested in insurance that handles this particular aspect. Some funds have restrictions on the amount of insurance that they provide and whether you are covered for particular employment conditions. So some form of trawling ability provided by the independent authority makes a lot of sense to me. It also fits in with the concept of providing the information to the people who perhaps cannot afford to pay the very high costs of the detailed analysis that financial planners provide.

Senator SHERRY—Thanks.

CHAIRMAN—I note you make some reference to self-managed super funds. Do you think the Taxation Office is the most appropriate body to administer and regulate self-managed super funds?

Mr Beasley—SMFs have issues of tax, but primarily they are superannuation funds. Our belief is there should be only one regulator and the SMFs should come under that regulator because there are issues unique to superannuation that they need to consider. The taxation issues, quite clearly, would be considered in the same way that any other investment or investment product is controlled by the tax office. So you are left with two regulators in one sense, but the issues unique to superannuation sit, in my mind, with the superannuation regulator.

CHAIRMAN—And who should be the single regulator?

Mr Beasley—An amalgamation of an APRA and an ASIC.

CHAIRMAN—So you think ASIC and APRA should be amalgamated?

Mr Beasley—That is basically the suggestion that we and other parties have put in our submissions.

CHAIRMAN—That wouldn't just apply then to superannuation, though; that would apply to the regulation of the whole financial services sector, wouldn't it?

Mr Beasley—Sorry; could you say that again?

CHAIRMAN—If you are proposing that those two bodies be amalgamated, you are proposing a major change to the whole regulatory structure for the whole financial services sector, not just superannuation.

Mr Beasley—In relation to superannuation in particular; our focus is only superannuation. Superannuation is unique. Everybody is forced to save via superannuation. Because of the mandated nature of the superannuation savings vehicle, it is appropriate that the government should have special rules and perhaps special regulation in relation to superannuation. It is probably the only investment vehicle that 70 per cent of the population will ever be involved other than their normal house. It makes sense in my mind that there should be acknowledgment of that unique nature.

CHAIRMAN—But you cannot amalgamate those two organisations in relation to just the administration of superannuation. If you amalgamate them, they become one body. That is going to affect the regulatory structure for the whole of the financial services sector.

Mr Beasley—What we are really proposing is a unique regulator in relation to superannuation, which might mean that the elements of superannuation go out of ASIC and APRA.

CHAIRMAN—Okay. So you are proposing in effect a third body dealing specifically with superannuation?

Mr Beasley—A superannuation specific regulator.

CHAIRMAN—I also note that you say that a $100,000 minimum balance should be a prerequisite for the establishment of a self-managed super fund. Are you suggesting that that should be the initial injection into a self-managed super fund before it can be established, or are you proposing a timeframe over which the balance should aggregate to $100,000?

Mr Beasley—We have suggested that except for where there is a financial planner who has come up with a plan and suggested that the establishment of such a fund makes sense for an individual. The costs of a self-managed fund are very significant and many people establish them for the wrong reasons. What we are trying to do is encourage the consumer to not make that decision unless they have very strong advice otherwise.

CHAIRMAN—I do not think that you have addressed my question. My question was: would you allow a timeframe over which the fund could grow to $100,000 as the prerequisite or does it have to be $100,000 initial injection into that fund?

Mr Beasley—Our submission says either $100,000 or a financial planner's assertion that it is appropriate in that individual's case. We would not put a timeframe. It is a categorical limit of $100,000 or $200,000—whatever you choose to have—with an out that says that if there is appropriate advice then they have the ability to set them up. It is very hard somehow to know what is particularly relevant to an individual.

Senator SHERRY—Just on the SMSF issue, you refer later to compensation issues and theft and fraud. But they are not covered by—

Mr Beasley—I do not believe that they should be. If the individual is in control of the investments, they should not be covered by any scheme.

Senator SHERRY—Even theft and fraud? I am not talking about poor investment choices within the sole purpose test but theft and fraud.

Mr Beasley—If the theft and fraud was outside of the ambit of the family members running the fund—in other words, if it was their financial planner—I would expect that some form of insurance would cover that issue. What I was specifically talking about was the risk that is associated with members running the fund themselves.

Senator SHERRY—The reason I asked that question is that overwhelmingly the cases of malfeasance, theft and fraud appear to have been in self-managed super funds over the last 20 years. With the commercial nominees case that you referred to in your submission, there were lots of self-managed super fund structures underneath the entity and as part of the entity—not all of them were, but some. What about a nice big disclosure on the front of every self-managed super fund saying, 'You are not covered in the event of theft and fraud'? No-one involved in this area that I have met has any idea that they are not covered in the event of theft and fraud. Do you think that that would be a suitable warning to them?

Mr Beasley—The short answer is yes. I share your concern in terms of the SMSF generally. That is the area where there have been adventurous activities.

Senator SHERRY—I met with a couple of hundred Westpoint investors last week, about a third of whom were conned, frankly—we are covered by parliamentary privilege; the court case is still going, though. They were conned into using self-managed super funds. I asked them how many of them knew they were not covered in the event of theft and fraud, and not one of them knew that. I think they would have had a lot of second thoughts if they had been warned about that.

Mr Beasley—The question that you are asking is whether they have a case against their financial planner. I think that could be an issue outside of merely the covering of the superannuation fund per se.

Senator SHERRY—There are a lot of other issues: there is the fixed compensation PI insurance, which is open to contention.

CHAIRMAN—On the issue of disclosure you say that the rules should be amended to remove any doubt about the validity of advertising. What is your view on disclosing the costs of advertising and other services that might be provided by related third parties to superannuation funds?

Mr Beasley—I think the annual report should separately itemise a variety of different sorts of information, one of which would be advertising. I think it should be separately recorded, as should be details of any major contracts that are applicable. I think open disclosure of all information is the approach that we would prefer.

Senator SHERRY—That is not a requirement at the moment. Some reports have them in it and some do not.

Mr Beasley—And, from looking at some reports, there are a variety of ways in which trustees have elected to report information. It varies very significantly.

Senator SHERRY—I agree with that. Would you also extend that to executive remuneration and trustees' remuneration? Again, it is a very mixed picture in terms of disclosure.

Mr Beasley—The public company rules in relation to disclosure would make sense. That is executive remuneration and direct remuneration. Effectively they are public companies.

Senator MURRAY—I have been concerned about—

Senator SHERRY—Aren't they private companies?

Mr Beasley—Yes, but in a practical sense—

Senator SHERRY—Yes, sorry; I accept that.

Senator MURRAY—Let us talk about that from a legal perspective. The entities which cross over in the not-for-profit sector vary enormously, from companies limited by guarantee to small associations. The Australian Accounting Standards Board is looking to develop a not-for-profit specific accounting standard, taking into account the particular requirements that are necessary in the sector. They are influenced by people for whom disclosure or reporting needs to be less onerous, but my feeling is that they need to take account of all those charities, agencies, churches, superannuation funds, health funds and so on, all of which fall within the not-for-profit sector and have the same sensitivities—sensitivities about remuneration, percentage of management costs and advertising and promotion. My belief is that you should have a principles based accounting standard which is common to like entities, which is the point you made about them being, in effect, public companies in their nature. My question to you is: are you aware of any attempt by your industry to interrelate with the Australian Accounting Standards Board on the issues of how your accounting standard should be structured to account for the particular nature of not-for-profit entities in the sector?

Mr Beasley—I am not personally aware, some of my advisers may be. My view would be, in the first instance—

Senator MURRAY—Can you just check for the *Hansard*?

Mr Beasley—Are we aware? No, we are not aware. Generally I am arguing that, because superannuation is mandated, it is acceptable to have special rules in relation to it. If an individual's biggest asset in life is in superannuation, it makes sense that they are different from the local charity or whatever in terms of the impact on the individual if something goes wrong.

Senator MURRAY—They are not different from HBF or a major agency providing employment services; they still have a degree of public responsibility which requires common reporting.

Mr Beasley—I fully acknowledge that, in that sense, they do have the responsibility. But what is unique is the impact on an individual of having the majority of their assets in one location and being forced by legislative mandate to do that. I agree with the principles approach, but what I am saying is that there are particularities in relation to superannuation which I think could suggest a very careful and special analysis of the reporting needs is required.

Senator MURRAY—Through you, Chair, may I ask whether the secretary to the committee could check with the peak bodies of ASFA as to whether they have interrelated with the Australian Accounting Standards Board on these issues at all.

CHAIRMAN—Yes.

Senator SHERRY—Not many have raised the difficulties with clearing houses in their submissions, have you had any particular contact with the ATO about people being unable to make a contribution to the account or knowing what to do with the money, the penalty application and those sorts of things?

Mr Beasley—We have had discussions with the ATO and with other entities. A practice paper was put out probably in the last two months that addresses virtually all of the points we have raised in this submission. The outcome from the ATO was basically an acknowledgement of the issues and a way to address them in a practical way moving forward.

Senator SHERRY—Would any of them require legislative change?

Mr Beasley—It would appear not.

Senator SHERRY—The only other matter I want to raise is experienced directors in the context of trustees, which you have raised. How would you do that? Are you suggesting that we should have professional trustees and no lay trustees or that we should have a mix, or are you suggesting that the mix of expertise on a trustee board is not right?

Mr Beasley—We come from the background where we are an equal representation trustee board, which means that we have elections for our board.

Senator SHERRY—When you say you have elections, are they elections from among all the members?

Mr Beasley—From all of the members.

Senator SHERRY—Okay. That is unusual model, but I do know that it exists elsewhere.

Mr Beasley—In some senses it is unusual, but it would not matter whether they were appointed by a union or by an industrial body—the principle would still apply that, in this highly commercial era, you want and need the relevant experience at the director level, the trustee level, to address all of the quite complex issues that are before trustees today. I think that the game today is totally different from the way it was 15 or 20 years ago. The complexities and commercial constraints of some of these issues are massive.

Senator SHERRY—I understand that. It would be quite possible in the elective situation to have an elected trustee and then find that APRA may say they do not provide sufficient expertise to be sitting on the trustee board, in terms of the trustee group as a whole, but they have been elected. It seems to me that that would be a quite possible eventuality. In the mix of expertise, and I accept to some extent what you say, are you advocating professional trustees per se?

Mr Beasley—No. I am personally in favour of the concept of elections because I think they actually provide a governance control on the trustee board in a longer term sense and I think it is very important to have checks and balances. All we are suggesting is that there be some way within that structure to make sure that the competency level of the relevant trustees or directors meets a minimum standard, whether that minimum standard be experience or something else.

Senator SHERRY—For example, PS 146 courses seem to be in vogue—if I can use that expression—and my understanding is that APRA does say to newly appointed trustees or to the entity, 'Go and do a PS 146 course in a range of areas.' Do you do that?

Mr Beasley—In our particular case, all of our directors have reached minimum standards in relation to superannuation knowledge. They are also members of the Australian Institute of Company Directors. We have gone a long way to encourage minimum levels within our board. As much as anything, that reflects our view that there is a requirement for a fair degree of professionalism—but we do not necessarily want professional directors.

Senator MURRAY—Mr Fisher, you say in your submission that the RCSA is the peak industry association for the recruiters and suppliers of part-time, casual and on-hire labour to commerce and industry. I assume a substantial block of those people are locked out of the superannuation guarantee system because they would be below the income level. Is that a correct assumption?

Mr Fisher—No, Senator. The income level is $450 a month, and most of the casuals would be earning more than that.

Senator MURRAY—If your experience with most of your clients is that they are in the superannuation guarantee mix then, with the passage of the Independent Contractors Act, are many or most or some of them now regarded as contractors?

Mr Fisher—There is a sector that are certainly regarded as contractors. In fact there is a special association to look after that sector. I guess it is true to say that the jury is still out in that there has been a lot of misunderstanding about what constitutes an independent contractor and whether in fact there has been a superannuation requirement for that person, depending upon the employment arrangements that they have been involved in. But, certainly, that would reflect quite a small percentage of the members that are served by our association.

Senator MURRAY—If you took a snapshot of, say, 100 of your part-time, casual and on-hire labour—and I do not know if that is a representative sample; I am just using that number for the purposes of this discussion—how many of that 100 would be excluded from access to superannuation either from falling below the minimum income level, and your evidence seems to indicate very few, or from being classified as independent contractors and therefore not having a superannuation element?

Mr Fisher—I will have to take an educated guess of three per cent, at the outside.

Senator MURRAY—So it is a low percentage?

Mr Fisher—A very low percentage, yes. For example, a large segment of our industry—and I am talking about the recruitment services industry—serves the hospitality industry, and whilst most hospitality workers would have as many as six or seven unique, separate pieces of employment in a week, the total income of each of those individual employees on a monthly basis would be more than $450.

Senator MURRAY—Do you find any difficulty in getting employers to pay up the full nine per cent? Is there a level of concern about underpayments?

Mr Fisher—No. Our members are the employers. We pay whatever the industry rate may be—it is an award-plus rate—pay superannuation on behalf of those employees and then on-hire them to end users. That is the nature of the business.

Senator MURRAY—The coalition government have introduced a strengthened regulator under their bureaucracy called the Office of Workplace Services, and they are exhibiting a higher level of discovery of the underpayment of entitlements. My natural assumption is that the risk would be greater with the more mobile labourers—or the less permanent, if you like; those with more than one employer. That is what lies behind my questioning, and your answer seems to indicate that you do not think there is a greater risk.

Mr Fisher—We are a regulated association and, as such, the employer members that we attract are, presumably, running professional and sophisticated businesses. There is certainly an element, we believe, outside the on-hire sector—for example, the direct hired casuals—that may in fact miss out on superannuation for various reasons, some being perhaps the payment of cash as opposed to a proper payroll system et cetera. Certainly, as far as the members of the association that I represent—and, by association, the members of the Professional Association Superannuation Fund, or the employers who contribute to it—there is quite a degree of structure and rigidity, and there would be very little likelihood of superannuation not being paid.

Senator MURRAY—You are the latest in a long list of super funds who take a great deal of interest in the SMSF area. I have wondered why you feel it is any of your business. Of course, some people have a view that they are competitors in the sense that super money ends up in them instead of in the formal funds. Can you explain to me why you are motivated to have an opinion about SMSFs and why it matters to you in terms of your sector?

Mr Beasley—We see that our clients consist of both the employees—the members of the fund—and the employers. When you are talking to the employers, you find that they are interested in providing a solution for their employees across the whole gamut of remuneration. There will be employees who are very well paid and those employees might want to actually have an SMSF. Our task is to try to integrate—if that is the right word—some of our services to those employers, and therefore we have come across that. The recruitment industry, in particular, has quite a large number of what would be considered small businesses, and the owners of those small businesses might have self-managed super funds. So we are coming across it in a day-by-day sense. Therefore, we are interested—

Senator MURRAY—Do you mean as a matter of choice; as part of the choice regime?

Mr Beasley—As part of the overall marketplace that we operate in. I will not say that it is particularly as a result of choice. I think these issues were around well before choice. Choice has enabled us to focus particularly on providing an integrated service to employers. Therefore, it becomes an issue for us and we have tried to work out how we can integrate our fund with the SMF—for example, by providing the insurance.

Senator MURRAY—Do you have any feeling as to whether those of your members who have SMSFs shift to SMSFs in total or, effectively, run two sorts of superannuation vehicles: one the nine per cent guarantee vehicle, which might be with your fund, and also their own discretionary fund, which is the SMSF?

Mr Beasley—I believe—because I have had practical instances—that quite a lot of people actually use our fund as the collector fund and for insurance purposes and they run their SMF side by side with our fund. It is particularly relevant in the IT sector, where IT people are generally contractors. Figures suggest that 25 per cent of those might actually have SMFs.

Senator MURRAY—When you suggest a threshold, have you done any formal research in your area to establish what the average size of an SMSF is where they are parallelling it with your fund?

Mr Beasley—I am probably out of date with some of my research, but we were talking about $250,000 as being the average balance some time ago. I am sure that is out of date now.

Senator MURRAY—I am just referring to your sector, not across the whole industry.

Mr Beasley—We have assumed that the sector generally will follow the overall industry. By having $100,000 you are cutting out the small end of the SMFs. The other research that we have done suggests that the cost of running such a fund is $2,000 to $3,000. If you think of that as a percentage of assets, it is two to three per cent of $100,000. Anything lower than that can be provided by other cost-effective means.

CHAIR—Thank you very much, Mr Fisher and Mr Beasley, for your attendance at the committee this morning and for your assistance with our inquiry.

Mr Fisher—Thank you for the opportunity to be involved.

[9.55 am]

CAMPO, Ms Robbie, Project Manager, Industry Super Network

WEAVEN, Mr Garry, Spokesperson, Industry Super Network

WHITELEY, Mr David, Executive Manager, Industry Super Network

CHAIR—Welcome. The committee has before it your submission, which we have numbered 77. Are there any alterations or additions you wish to make to the written submission?

Mr Weaven—No, there are not.

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

Mr Weaven—Thanks very much. We appreciate the opportunity to be here and to answer any questions. Industry super funds over the past quarter of a century have grown enormously in size, in terms of funds under management, in terms of the number of members covered and also in services and capacity to deliver improved retirement benefits. Funds under management under the APRA definition of industry super funds are now of the order of $170 billion, and something like half the working population of our country is covered by them. The industry super fund model is built around a number of key guiding principles. Those are: a commitment to low fees, to being run on a mutual or all profit to members basis and to paying no sales commissions. Those principles, we submit, enable industry super funds to maximise the returns paid to their members at retirement.

Research has shown over the past few years that the investment performance of industry super funds has been superior to that of retail master trusts. The SuperRatings survey of 50 balanced funds as at 30 June 2006 showed that the top 10 performing funds over the previous five years were all industry super funds. That is pretty remarkable because the number of industry funds is underweight in terms of the universe. Industry super funds have also commissioned research over the past few years which takes into account the net outcomes for members after investment returns are paid and fees and taxes are deducted. We have called that the net benefit for members. That research demonstrates that members of industry funds on average would end up with substantially more at retirement than the average retail master trust member. That research has been carried out both by SuperRatings and by Rainmaker, with very similar results.

We have included that information not just to prove our view that industry super funds offer a superior model for superannuation for most Australians but also to provide background to our submission to you that the framework of financial advice, particularly as it applies to the superannuation industry, requires urgent reform. On average, industry funds have superior investment performance at a substantially lower cost to their members than retail master trusts. Despite the demonstrated track record of industry super funds to deliver a better net result, the bulk of the financial advice industry does not recommend that its clients put their super in industry super funds.

Many submissions to this inquiry have attempted to characterise industry funds as anti-advice. We wish to make it clear that that is not the case; we are in favour of a financial advice industry that provides fee-for-service advice that is given in the best interests of the client. We think what is missing from the system is the requirement for the best interests of the client. We are opposed to the payment of sales commission by product issuers to advisers to recommend their product. We are opposed to remuneration principles and practices, which embed a conflict of interest in nearly all the financial advice given in Australia today, because they do not require acting in the best interest.

The current regulatory framework for giving financial advice is considerable but the law skirts the main problem—which has caused nearly all the major recent advice scandals—that is, sales commissions. The result of the ASIC shadow shopping survey, the problems with AMP and super switching and the Westpoint debacle all point to the corrupting influence of sales commissions. We submit that in no other professional relationship is such a conflict permitted to exist. The planning industry generally holds up disclosure as an answer to the problem of commissions; however, we think it is a grossly inadequate solution. We do not believe that the average consumer fully appreciates the compounding effect of higher fees and commissions, which significantly erodes retirement savings over a working life.

What should be done? We submit that a legal requirement for financial advisers to act in their clients' best interests is required. It seems obvious to us and we think it is obvious to the Australian population. We have recently had conducted a Newspoll research exercise which has found that 82 per cent of Australians agree that financial advisers should be required to act in their clients' best interests. Such a requirement would bring financial advisers into line with professional obligations imposed on other professions such as doctors and lawyers. Within that framework we think then it would be possible to undertake a meaningful review of financial services regulation in order to address concerns about the cost of compliance, improved disclosure, consumer protection and the quality of the advice.

Finally, total super assets, as I am sure you have been told by others, are now approximately $1 trillion—

Senator SHERRY—Paul Keating told me that yesterday!

Mr Weaven—He also said that. On that basis, we are neck and neck now with Australia's entire GDP, and neck and neck with the entire market capitalisation of the stock market in Australia in terms of total value. That means that quite small percentage variations in net benefit, whether resulting from costs or investment performance, will have a dramatic impact on medium to longer term total national savings and wealth. So the national interest will therefore be best served by a policy framework including governance covering advice and distribution which favours better performing funds or sectors. The current commission based regime, if anything, favours the reverse and is therefore in need of an overhaul because it is against the national interest. We are happy to answer any questions that we are able to.

CHAIRMAN—Perhaps I could commence with the issue of commissions. The Financial Planning Association in their appearance before the committee has suggested that if commissions were banned, it would be particularly disadvantageous to low-income Australians because they do not have the cash available to pay for up-front advice and that in effect the

commission structure allows an element of cross-subsidisation of the costs of advice. What is your response to that?

Mr Weaven—The presumption underlying that is that those low-paid people are advised to put their money into a good super fund, and that is overwhelmingly not the case. They are not advised to put their money into the best super funds, they are advised overwhelmingly to put it into the funds that pay commission. Beyond that I think they have a small point with respect to the need to do something about very low-paid or low-account balance people in terms of advice. I think the best approach to that is what virtually all the industry funds do now, which is to provide simple collective advice, wherever possible through seminars and other formats. That simple advice would not be sales advice but advice about how the tax law works, how the superannuation regulations work, how that interfaces with the social security system and how member investment choice works—things of that nature. This is basic advice which can be provided collectively to save costs where people do not require a plan and where they are not sold an inappropriate product.

CHAIRMAN—In your submission you say that industry funds typically do not pay sales commissions. Can you explain what circumstances there are where industry funds do pay commissions?

Mr Weaven—We were made aware ad nauseam by the financial planning industry about Health Super, which you were speaking to, as I understand it. They are appearing soon, so you can ask them about their alleged commission. We had that touted in the press as an example. To us, it is an example that, if anything, it proves the rule because it is the only one that has come to light. There may be others for all I know, but we are certainly not aware of them. Our understanding of that particular case, by the way, is that it is a commission which is retained by the members of the fund, but it may be characterised as a sales commission because it applies to their allocated pension product. It is a question better directed to them.

We do not purport in any way to represent Health Super. I was not even aware they were an industry fund. They always used to be a public sector fund, but the characterisation of funds is a little difficult at times. We do not purport to represent them or to say that there is no industry fund that would ever in any circumstance pay a commission. The ones that are included in our ads certainly do not. We have ensured that is verified, and it is a condition of participating in that website, that phone number and that ad that they do not pay any commissions at all.

CHAIRMAN—Do you think that members of industry funds are getting adequate advice, particularly with regard to choice of fund and asset allocation? I think it has been acknowledged in earlier hearings that about 90 per cent of account holders, including what would be a large number of younger account holders, are in balanced funds rather than perhaps in growth funds, where you might expect a younger person to have their super savings.

Mr Weaven—I think most of the industry funds certainly give them the chance to get adequate advice—that is, they regularly mail and advertise free seminars. They put out a lot of material and other, larger, more reputable funds do, too, not just industry funds. But I think it is fair to say that people could benefit from further information and advice, provided it is appropriate. In a sense, you cannot force people to be interested. If a 28-year-old is more interested in playing football than retirement then it is a difficult problem. While you and I might

suggest that they could benefit from looking more closely at the things that affect their long-term welfare, it is difficult to get attention in a world of many competing activities. We all should do more to educate, but we should all do less to sell, and some of that selling resource that is wasted in the superannuation industry needs to be rechannelled into education information.

CHAIRMAN—Apart from commissions, do industry funds provide any sales incentives?

Mr Weaven—I am not entirely qualified to answer that, but I think the situation would presumably be that some of their marketing people would be KPI-ed on success measures, but I think it is a question better asked of the funds.

Senator SHERRY—Just before we leave this issue of advice, aren't there some difficulties under FSR in providing what would be termed 'limited advice' in respect of specific aspects that a fund member may need to know about?

Mr Weaven—It appears that some people who have studied that matter more closely than I have believe that. I must admit I have always tended to be of the view that funds should not be overly frightened of the regulation in terms of what it prevents them from doing. Most funds want to act in bona fides and give people basic information, true information about their fund. In most cases I find it hard to read the regulations as preventing a fund from adequately and forthrightly explaining their fund and the benefits of their fund. Obviously, there are regulations around it. It is open, therefore, to interpretation. I understand ASFA has made a pretty useful commentary about how that might be addressed in an environment where there were no sales, no new product sales or no new product retention involved. But, by and large, I think the funds now can and do communicate pretty well to their members the basics of how their scheme works and how the system works.

Senator SHERRY—Right across the board the industry funds expressed a fair degree of apprehension in this area. They are frightened, perhaps legitimately, of the difficulties they may encounter with a regulator on this issue. Also, could you comment on the sheer volume of material and its readability in the context of FSR in terms of informing people?

Mr Weaven—Any apprehension and concern about the volume of material has to be balanced against any apprehension and concern about what any new regulation might do. It has not necessarily been the case that the situation has improved when a new regulation replaces an old regulation nor can there be a presumption that that would be the case. It is a very complicated area and it is difficult to regulate adequately. Any re-regulation needs to proceed from very pure motives and a very clear insight as to the national interest and interests of individual consumers. I certainly do concede that the amount of paper and material apparently required in the average product disclosure statement tends to mask the simple proposition that, for example, a member of a commission-driven product is likely to pay huge amounts of their future retirement benefit in commissions over their working life. That does tend to be clouded by the amount of paperwork—I would concede that. If there is a way to reduce that paperwork and make it simple, that should be looked at from the proper motive perspective.

Senator SHERRY—The other issue in this area about commissions and planners and their activities concerns the product list. Now that we have a relatively smaller number of funds that

have all been relicensed, why should we have a product list, which is effectively a restraint on trade in the context of superannuation? For other financial products, I think it is a different issue.

Mr Weaven—I think we would be better off without a product list. If there were a product list, it definitely should include the major and best performing funds. To have some sympathy for the planning industry, I suppose they are trying to limit their exposure. It is not reasonable, clearly, to say to someone that if they are not aware of every detail in every superannuation fund that is automatically a failure in their professional training. That is a fair point. But the product lists that exist today do not list for reasons of that professional training; they list because the principal of the firm has negotiated financial arrangements for reward with only a certain number of providers, and that is the product list.

Senator SHERRY—Perhaps we should send your sympathy for the planners on to them.

Mr Weaven—I do have genuine sympathy for the planners, particularly when they have to be the butt of us exposing the problems in the industry. They should clean up their own industry and move to a fee-for-service basis. They should be behind us, supporting the requirement that we should all act in the client's best interests, and then they would not be attacked.

Senator SHERRY—I know a lot of the industry funds now have either their own planner internally—UniSuper are a good example—or some sort of bulk purchase contract arrangement with a provider. Are they all paid a salary?

Mr Weaven—As far as I am aware. Clearly, if planners present themselves as giving independent advice in the best interests of the client, they are going to have a problem if their funds are not superior. That would apply to everyone; it applies to us and industry funds as well. If we found that the industry funds were underperformers, we would have a real problem with that model. We would have to review that model. Currently there is no requirement on anyone to review whether they are giving advice in the best interests of the member. We are able to say we believe we can because we have got a great stable of the best products.

Ms BURKE—Some of this stuff about limited advice and sales and all the rest of it probably depends on the life cycle of when you are seeking that advice—for example, if you are in the fund at the time and you want some advice on whether you need some more insurance or whether you should salary sacrifice versus when you are about to retire and you are deciding whether you should stay with the fund and get an allocated pension or whether you should go to a financial planner about the whole range of your finances. We are getting to the pointy end now where a lot of people who previously never had super are about to retire and are going out there and saying, 'What do I do with this lump sum to see me through 20 or 30 years of retirement?' I am looking for your perspective on the advice industry funds give to people retiring versus the advice they give when people are inside the fund and how we deal with that dilemma, which I think is going to be more the issue for us now and into the future than some of this choice issue and all the rest of it. How do we address that? I think that is where a lot of this is getting to.

Mr Weaven—There is a lot of free advice provided now by our planners, but more so by fund staff, about those basic issues. It is a complicated area. I think you could probably improve the regulation with a few simple rules about distinguishing selling from advice and distinguishing benefiting yourself or your principals and simply giving advice which is neutral to yourself—in

other words, in normal circumstances, where it makes no difference to the fund representative or the planner whether a person puts 60 per cent into the growth option or 80 per cent into the growth option within the fund. I think you have a point, but I would say that you should tread warily, because past regulation has not solved the problem.

CHAIRMAN—Witnesses have raised with us a concern about the transparency of relationships between some funds and service providers and related party transactions and associations. Do you support the full disclosure of related party arrangements and transactions and associations?

Mr Weaven—If I understand correctly what you mean by that, I think I do. It is ironic that some of our opponents raised the issue of disclosure, because I think industry funds have been champions of disclosure from day one. From the very first of the new era of industry funds in 1984, the whole principle in the writing of the trust deed and the arrangements—the tendering arrangements, the contractual arrangements with service providers and the outsourcing—was done on a basis that was designed to get the best result for a member. It was not done on the basis of all the other funds at that time which were set up to make a profit for an external shareholder. So, in general, we love the disclosure and transparency issue—if we understand what is meant by it.

CHAIRMAN—One issue that has been raised with us is the role of Industry Fund Services—which you are representing today as an organisation—in providing services to industry funds and whether there is adequate disclosure of those relationships between IFS and the funds and the process that is gone through in terms of contracting IFS to provide those services.

Mr Weaven—IFS is now really absorbed within Members Equity—but don't let us hide behind that. I wonder what it is that is not transparent about it. It is a company that was entirely controlled by its nine industry fund shareholders. Before that, going back some years, there was some staff equity in it. It has regular board meetings. It is audited by PricewaterhouseCoopers. Every one of its clients has a contractual arrangement which is obviously transparent to the user. It is not a listed company. It has no issues about transparency to the wider public. It is transparent to its owners and it is transparent to its clients. I do not understand what the problem is. The various sallies down this line in the past have all been based on false premises and really bad information.

CHAIRMAN—One of the issues that was raised was whether there is transparency in the fees that are earnt.

Mr Weaven—Absolute transparency.

CHAIRMAN—This was raised in a paper—this might be going back three years—by Mr Peter Johnston from the Association of Independently Owned Financial Planners: He said:

... most industry funds do not fully disclose the true cost of administration to their members and the market's dominant player, Industry Funds Services Pty Ltd (IFS), has relationships we find difficult to understand.

He then said:

Many choose to only disclose $1 or $1.50 per week as 'the only fee' which we do not believe to be the case. A close look at the annual report and balance sheet of many high profile funds will reveal that the cost is substantially more, as high as 5%.

What is your response to that?

Mr Weaven—I do not know what that has got to do with IFS. But let me say—

CHAIRMAN—He refers to IFS.

Mr Weaven—Well, IFS is not a superannuation fund.

CHAIRMAN—I am talking about the fees charged to superannuation funds by service providers.

Mr Weaven—What fees are you talking about? The best thing I can actually do—

CHAIRMAN—For the services they provide which are then charged through to members.

Mr Weaven—IFS was a diversified financial services company which provided financial planning services, funds management services and various other trustee services. Nothing that Peter Johnston says has any accuracy whatsoever. It is really unfortunate that you have based your statements in the house, in the Senate, on information from Peter Johnston. I have actually alleged in the past that that is where you have got your information from. You have now proven to me—

CHAIRMAN—Well, I quoted in the house his articles.

Mr Weaven—Absolutely.

CHAIRMAN—It was not hidden where the information came from. It was never hidden.

Mr Weaven—Peter Johnston used to be the principal of a firm called Goldsborough, out of your home state of South Australia. One of his major business planks was to try to get close to unions by offering various incentives so that he could go and service those people, get hold of them in redundancy situations and so on and pull commissions out of those people. He has been in and out of the financial planning industry over the years. He is currently not, as I understand it, qualified as a planner. He is not registered. He has taken up the role of secretary or CEO of the independent financial planners association. I think you should not be taking any notice of him. That is a very old letter anyway. You should not take any notice of him. You ask him about his members' overrepresentation in the Westpoint case. That would be a better dialogue to have with Peter Johnston.

CHAIRMAN—I am quite prepared to do that. I am quite prepared to be even-handed on this.

Mr Weaven—Okay. That would be great. Let me say, equally, you know that I believed virtually the whole of what you put on the *Hansard* at 1.50 am in June 2004 was badly based and

erroneous. I did do a response to that at the time. I am very happy to table that response as part of the proceedings today if that would help you.

CHAIRMAN—Okay.

Senator SHERRY—On the issue of Mr Johnston, we do not have a submission from him, have we?

CHAIRMAN—No, I do not think so.

Senator SHERRY—If we do not have a submission, we do not have a submission.

CHAIRMAN—No, we do not, so there is nothing we can refer to in terms of his submission to this inquiry.

Ms BURKE—Just the basics about the actual administration costs of industry funds: compared, across the board, to retail, how do the administration costs of industry funds compare?

Mr Weaven—They are much lower than all but the biggest funds, and they are lower than the biggest retail funds, as a generalisation. And they are all fully disclosed. Service provider fees are fully disclosed to the clients on a contractual basis—every fee, whether it is funds management or whatever the service is. The funds' fees in turn are fully disclosed to their members. People can therefore do that comparison, and I wish they would do more of it, frankly.

CHAIRMAN—I give you the opportunity to put to bed some of these other issues raised by Mr Johnston.

Senator SHERRY—He has not provided a submission, Chairman.

CHAIRMAN—No, but they have been raised.

Senator SHERRY—You are raising issues that are three years old. I am happy for the committee to write to Mr Johnston so we can test his evidence at some point, if he is prepared to give some evidence. It might be useful.

CHAIRMAN—I am happy to do that.

Mr Weaven—Is it appropriate, then, to table my response? Because most of these questions you put on the *Hansard*. We regarded them at the time as defamatory, as you know, and asked that they be repeated outside of the parliament, as that would be better. They have not been. If they are going to be raised again then I think my full and considered response to them should be part of the record.

CHAIRMAN—Please do table that.

Mr Weaven—That deals with it.

CHAIRMAN—Because, certainly, Mr Barrie Dunstan gave some credence to those issues prior to me raising them.

Mr Weaven—I don't think he gives credence to him anymore.

Senator SHERRY—Again, Chairman, I think it is a bit unreasonable to assert that somebody like Barrie Dunstan 'gave credence' when Barrie has not provided any evidence to the committee and we cannot test it.

CHAIRMAN—We could ask him. I am referring to an article that Barrie Dunstan wrote at the time, in January 2004, in relation to those issues.

Senator SHERRY—Well, there is a difference, Chairman, between reporting something and giving credence and support to the allegations made—a big difference.

Mr Weaven—I do not know what article you are referring to, Senator, but that predates your submission to the parliament if it was in January 2004.

CHAIRMAN—Yes. It was one of the pieces of information that I put together at that time; it was predating that. But he refers to Mr Johnston's paper in that article and talks a great deal about controversy. I think he is referring to the establishment of Members Equity Bank there.

Mr Whiteley—Can I ask, given the range of issues that is facing us in Australia within the superannuation sector, within financial planning, why we would want to focus on some of Mr Johnston's allegations, made three or four years ago. Are they relevant to the operation of the superannuation industry in this country?

CHAIRMAN—The questions?

Mr Whiteley—Yes.

CHAIRMAN—In the sense that an issue that has been raised is disclosure and transparency of service providers. That has been raised in submissions and in evidence by witnesses.

Senator SHERRY—Mr Johnston is not a witness and indeed he has not given us any evidence.

CHAIRMAN—No, but others have raised the issue.

Senator SHERRY—Yes, they have.

Ms BURKE—Mr Johnston could not have raised Members Equity Bank three years ago, though.

Mr Whiteley—And it is really specific information? Are there any specifics surrounding some of the issues that have been raised or is it just innuendo, gossip?

CHAIRMAN—Sorry, I am looking at Mr Weaven's response, which I have not seen before, not in detail.

Mr Weaven—I sent it to the Prime Minister and others.

CHAIRMAN—I have not seen it. I think the issue that was raised then by Mr Johnston was the staff equity trust issue. You deal with that in some detail here, I note. Perhaps if I look at that and then we could put some questions on notice to you.

Mr Weaven—I obviously should have made sure it got to you earlier.

CHAIRMAN—I can put some questions on notice if I have any queries after I have looked at it.

Mr Weaven—By all means.

CHAIRMAN—That would be a good way to handle that.

Mr Weaven—Yes.

Ms BURKE—Now that it is Members Equity Bank, there would be full transparency about the dealings between the funds and Members Equity and any service and service providers, wouldn't there—that would all be fully disclosed?

Mr Weaven—Absolutely. It is an APRA regulated bank and it has a board that conforms to the APRA requirements regarding certain numbers of independents and so on. The board, which I am on, meets monthly. It is a very well-performing bank, as you can readily ascertain from any of the banking statistics.

Ms BURKE—Tony Beck from Members Equity has previously appeared before the committee. We have actually spoken to Tony.

Mr Whiteley—I think, given the licensing processes the funds have gone through, that if APRA or ASIC had any concerns about transparency they would have come up then.

CHAIRMAN—In terms of the merger and/or acquisition, the relationship between Industry Fund Services and ME, where there were overlapping directorships did those directors absent themselves from those discussions?

Mr Weaven—Yes. Yes, they did—and that merger has now been completed. The IFS is not an operative company anymore. It is owned within Members Equity. The funds management group is a separate company owned within Members Equity; I chair that funds management group. The other parts of IFS have been absorbed into the structure of the bank.

CHAIRMAN—Perhaps one final question. In the transfer of the shareholdings from IFS and the various super funds that purchased those shares, irrespective of the number of shares—and there were a varying number of shares transferred from IFS to the various super funds—the

consideration seems to be a standard $25,500, whether it was four shares or 14 shares. Is that right?

Mr Weaven—No. That is per share.

CHAIRMAN—Per share?

Mr Weaven—Yes. It would have to be per share.

CHAIRMAN—Right. In the ASIC documents it referred to the total dollars paid for those shares.

Mr Weaven—Per share. The valuation for the purpose of the staff equity trust sale of shares to the industry fund shareholders was based on independent valuation of $15.3 million at that time. By the way, I think that group today would conservatively be worth $60 million, $70 million, $80 million, maybe $100 million.

CHAIRMAN—Those shares?

Mr Weaven—Yes. That value was applied per share, and I think what you must be referring to is the price per share. They would have been allocated in proportion to the industry funds' previous holdings in IFS.

CHAIRMAN—Perhaps it was a mistake on the form; this definitely refers to the total paid, not the amount per share.

Mr Weaven—I do not know what you are reading from.

CHAIRMAN—This is just the change of register.

Mr Weaven—If you say so, I will take your word for it.

CHAIRMAN—Who were the beneficiaries of that transaction?

Mr Weaven—I think the beneficiaries were nine staff—it is in that document, by the way, that you said you were going to read—of IFS. I think we sold approximately 13 per cent, so 13 per cent of the $15.3 million was the value of the shares that were sold to the industry fund shareholders.

CHAIRMAN—And previously there were two other tranches.

Ms BURKE—Can I ask the relevance of this line of questioning to this hearing?

CHAIRMAN—Mr Weaven said he is happy to answer any issues I have got and—

Ms BURKE—I can see he is very happy.

CHAIRMAN—it is in relation to the issue of transparency.

Ms BURKE—Transparency—okay.

Mr Weaven—Are there any further questions?

CHAIRMAN—There were two earlier tranches of shares in IFS SET.

Mr Weaven—No, I do not think that is right. There were some capital raisings in 2001—again, it is in that paper that has been everywhere except you apparently—by IFS from its shareholders. Only two of the staff participated in that because the others chose not to—they did not have enough money or whatever the reason was. The two that participated were Sandy Grant and me, and neither of us could afford to participate fully to our entitlement so we were diluted down.

CHAIRMAN—So the IFS SET shareholding in IFS was diluted as a consequence of that.

Mr Weaven—It was, yes.

CHAIRMAN—From 20 per cent back to—

Mr Weaven—I am not sure whether it was 20 per cent but whatever it was diluted to at that time. I think it was 15 per cent at that time—it had been diluted by new shareholders coming in—and it was further diluted at that time.

CHAIRMAN—Thanks. As I understand it, industry funds support providing 40-year projections.

Mr Weaven—Amongst other projections, yes.

CHAIRMAN—Can you provide the basis on which you make those projections in terms of assumptions and costs that you build in?

Mr Weaven—They are made by SuperRatings and Rainmaker, so they use their models. We do not tell them how do to that. They use their models and project on a 40-year basis—actually, they project on various time frames. In our advertising we use a whole range of different time frames for different aged people through to retirement age, so there is a variety of information provided on that. But the source has been the ASIC calculator and their recommended guidelines—for example, the earning rate assumed in projecting forward is assumed to be no greater, obviously, for industry funds than from other funds. I think it is about 7.225 per cent per annum net and that is after you net out tax and other charges off the ASIC model. That is how that is arrived at, as I understand it.

CHAIRMAN—Is that done independently of the funds themselves?

Mr Weaven—It is done independently of the funds themselves. It is when you are projecting earning rates forward.

Senator SHERRY—You mentioned that the earnings rate is the same as in other funds, including retail funds.

Mr Weaven—The same earnings rate is assumed for all funds going forward, including retail funds.

Senator SHERRY—Does that mean that the ads are understating the performance of industry funds against retail funds?

Mr Weaven—They do not reflect the past superior investment performance.

CHAIRMAN—Do industry funds disclose executive and trustee remuneration?

Mr Weaven—You will have to ask them directly exactly what their practice is. My understanding is that they certainly have to provide a full set of accounts, including trustee expenses. As to the degree to which individual trustee remuneration is noted, I am not sure; I really do not know. I think there may be a variable practice. I am sure that they all obey the regulatory law.

CHAIRMAN—With the advent of trustee licensing, will the cost to industry funds increase?

Mr Weaven—Again, it would be better to ask them, because it can vary a lot from fund to fund. The impression I get is that there has been some increase in cost as a result of the licensing and ongoing compliance, but I have not heard funds say that it is insupportable in any way or even inappropriate in most cases.

CHAIRMAN—Another issue that has been raised with us is advertising and whether that is consistent with the sole purpose test. What is your view on that?

Mr Weaven—That is the main reason we are here. That is the special interest that is particular to our group because we have the responsibility of coordinating that on behalf of a substantial number of funds. We have said all along that we are certainly not looking for any exemption from the sole purpose test. We think it ought to be judged in terms of the sole purpose test. We think the economies of scale in the superannuation industry generally are so overwhelming that almost the reverse case can be made; that unless trustees are doing really active things about trying to grow their membership base—and their funds under management, in particular—then maybe they are not really carrying out the sole purpose test, which is to maximise the benefits for the fund members. That is simply because, other things being equal, the unit cost per member can be expected to be lower as a fund grows or if a fund is bigger than other funds.

CHAIRMAN—Are you planning another advertising campaign shortly?

Mr Weaven—No, not another one. It is the same campaign and it just rolls on.

CHAIRMAN—Does each fund contribute to the cost of that campaign?

Mr Weaven—It is voluntary for the funds to be part of it. We have a good universe, and we also think it is large enough to be representative. We have had some amalgamations, so only 16 funds are currently involved in that advertising campaign, that website and that phone number.

CHAIRMAN—Is it 16 out of 40?

Mr Weaven—I am not sure how many industry funds there are; there are probably 80.

Senator SHERRY—Yes.

Mr Weaven—Some of them are so small as to hardly make an impact.

CHAIRMAN—How many are in Members Equity Bank?

Mr Weaven—There are 40 shareholder funds. Most of them are industry funds, but there are some public sector and private sector funds.

CHAIRMAN—So, of the ones that are involved in Members Equity, roughly half are involved in the advertising campaign?

Mr Weaven—Yes, I think that is true. I think some funds are so small that they do not regard that form of advertising as being of benefit to them.

Senator SHERRY—It sounds to me as though you have a few freeloaders living off the back of the advertising campaign.

Mr Weaven—It is true that a lot of funds, including some large ones, do freeload, as you put it, to an extent. That has been a problem for us in terms of the way the funds view it. But, on the other hand, in our view the message is so important and so fundamental to the welfare of working Australians that we think we should tolerate that rather than have people kept in the dark by the current financial advisory regime and other advertising.

CHAIRMAN—Have you been increasing your advertising spend?

Mr Weaven—No, it is actually falling quite rapidly as a percentage of the funds under management. I am not sure it should. I think there is a case to be made to step up quite a lot, but currently it is more or less constant in dollar value terms. That is what we are responsible for; I am not sure what else happens throughout the network.

Senator SHERRY—On the advertising issue, are figures publicly available on superannuation advertising over the last couple of years? I am not just thinking of industry funds; I am thinking about retail as well.

Mr Weaven—I think there are industry figures. I have read them in the press.

Senator SHERRY—Yes, I can recall seeing some figures.

Mr Weaven—I have read press quoted figures sourced from the advertising industry. I am not sure of the authenticity of those figures.

Senator SHERRY—Chair, we have not had a submission from the advertising industry. Given the issue in our terms of reference, it might be useful to get the data, if it is available, on who is advertising and their spending over the last couple of years.

Mr Whiteley—I have a little bit of data. ASIC produced a report, I think at the beginning of last year. It is the most recent report they have done on advertising.

Senator SHERRY—If ASIC has done it, we will ask ASIC.

Mr Whiteley—Just for your information, industry super funds represented about seven per cent of advertising spend within the industry, financial planners 38 per cent and retail funds 22 per cent. Last year, according to ACNielsen, the five major banks collectively spent $165 million on advertising.

CHAIRMAN—Have you been able to do any accurate assessment of the benefit to members of advertising? My recollection is that ASIC said the advertising met the sole purpose test if it was to retain members or spread the cost more cheaply among members.

Mr Weaven—The firm we use for professional tracking of all of the attitudinal changes and moves and so on is—

Ms Campo—New Focus research.

Mr Weaven—Yes, New Focus research is currently doing that work. Before that we had another research group. The funds regularly look at that data to see whether it is having the intended results. It is largely, as you would appreciate, an attitudinal campaign. It is attempting to overcome bias that people might otherwise absorb in the marketplace, either from financial planners or others.

CHAIRMAN—I suppose, given that, it is hard to measure. Is there any measurement as to its success in either retaining or increasing your membership as against what otherwise would have occurred without the advertising?

Mr Weaven—As you probably know, in marketing and advertising generally there is always some subjective element to calculation. However, the attainment of goals within the goals that are set could not be clearer.

Ms BURKE—Do you know overall whether the industry funds have done any tracking since super choice about people moving in and out of industry based funds and spillages you have had since super choice, or people actually moving into industry funds based on that choice? Has anybody done that sort of work?

Mr Weaven—There is some data.

Mr Whiteley—Yes, there is research which has been undertaken by Roy Morgan, which I do not have to hand, which indicates that a greater proportion of people are rolling into industry funds than rolling out. The APRA data demonstrates that industry funds are continuing to grow. The context to this is the fact that, as Garry raised earlier, there are very few, if any, financial planners actually recommending industry super funds. So in the context of no financial planner recommending an industry super fund to any of the clients who go to see them for advice, industry funds are still continuing to grow.

CHAIRMAN—Some industry funds state that they provide or arrange free advice. How is that advice paid for—nothing is free, unless it is a charitable organisation relying on charitable donations?

Mr Weaven—Obviously it comes from the members' funds, and that is why it has to be limited. But obviously the funds—and I totally agree with them—see it as part of their obligation to provide basic information and advice. The main way in which they do that is through collective mechanisms—mass mail-outs, workplace seminars and so on.

CHAIRMAN—Are there no incentives provided for industry funds meeting sales targets?

Mr Weaven—I have no idea how the industry funds individually incentivise their staff. I imagine to the extent they have sales forces that they would expect them to hit targets.

CHAIRMAN—So that is a question for the individual funds?

Mr Weaven—Yes, it is a question for the individual funds, because it would vary. All we are confident of is that they do not use sales commissions.

CHAIRMAN—I am relying on memory here, but did IFS or the industry funds sponsor the anti Work Choices rally that was here in Melbourne?

Mr Weaven—IFS did not, to my knowledge.

Mr Whiteley—None of the industry funds did, to my knowledge.

Ms BURKE—That was a long bow.

CHAIRMAN—Are there any further questions.

Senator SHERRY—I note the provision of the performance tables in the submission—performance over the one year, three years and five years. I am pleased to see HOSTPLUS in that five-year performance table. I have a vested interest in that one. Do you have any more details than that going down, say, to the top 50 performers? I am just wondering when we actually get to a retail fund. They are not in the top 10.

Mr Weaven—In the data for the last financial year SuperRatings publish a major league table—it is as many as they can get data on, I think, really, but there are 50 funds. In the period to June last year, all 10 of the top performers were industry funds, provided you make Telstra Super an honorary industry fund for the occasion—they actually got into that list. All 10 of the

bottom were not industry funds, except for our friends from Health Super, who unfortunately squeezed into that list. I am sure they will not be there regularly, but they did squeeze in.

Senator SHERRY—Will we have to pay for that data? It might be useful for the committee.

Mr Whiteley—My recollection is that for the five years to 30 June 2006, 18 of the top 20 performing superannuation funds were industry funds.

Senator SHERRY—Frankly, of greater personal interest is who is not performing over five years. I take your point about the industry funds performance. It may be interesting to look at how many industry funds are at the bottom of the league as distinct from the top. Also, with regard to some of these corporate funds—Telstra is a corporate fund—it begs the question as to why some of the other big corporate funds are not up where Telstra is.

Mr Weaven—We do not have a particular interest in trying to single out individual underperforming funds. We know, by and large, that funds can be underperforming one year and then a good performer for the next year. That happens. We are interested in the observable pattern of the massive overrepresentation of industry funds at the well-performed end. We assert that that is not an accident. It is not because of the brilliance of the people involved; it is because of the model. The model has certain superior characteristics in it on behalf of the workforce.

Senator SHERRY—You are too modest, Mr Weaven.

Mr Weaven—Sometimes you get some brilliance.

Senator SHERRY—There are some brilliant people in the superannuation industry. Certainly in some of the industry funds brilliance shines.

Mr Weaven—There is occasional brilliance.

Senator SHERRY—I think the performance of industry funds speaks for itself. From a policy point of view, identifying those at the bottom of the league and why they are at the bottom of the league—and I am talking about five-year rate of return; I do not make those calls on one or two years, obviously; it is long-term rates—is important. The reason I raise that as an issue is, for example, in the context of corporate funds, Telstra is obviously a very good performer. But corporate funds are a monopoly. They have bound provisions. There is no choice of fund where there is a corporate fund, which is an interesting issue in the debate on choice. If they are not performing well, why should they be allowed to maintain a monopoly? It is an issue that flows from the lack of performance not just from retail funds but the lack of performance from most of the corporate funds.

Mr Weaven—I think in the end the shareholders of the corporation behind it will find them out. Often it is worse than that: they are also subsidising the fund. In the end, the day that the government proclaimed the choice legislation was really when the deathknell sounded for corporates. Corporates cannot survive in a world where there is a significant degree of choice; they cannot survive in the long term. I am expecting nearly all of them to disappear. The only ones that will not will be those companies that really believe so fervently in having a superior superannuation system that they really pump it up and subsidise it. If they do that I am not going

to be one of the people to complain. I am going to say good luck to the working people who are part of it.

The real issue about corporates is not that. The real issue about corporates is that they do not have underwriting beyond the bounds of the corporation. The real question is that if they go wrong all of the workers are affected and potentially lose all of their retirement benefits.

Senator SHERRY—And if it is DB and it is unfunded—

Mr Weaven—The fund just goes down.

Senator SHERRY—I understand that. My understanding is APRA's latest advice on that is that our DBs are secure compared to those of other countries where they are a shambles.

Ms BURKE—I have a question on the issue of choice. Do you think that we have gone too far? Do you think that has become the big complicator in the whole thing in that in an area where so many people are financially illiterate we are actually asking them to make a choice about something? I have never read my super documents. I will be honest with you: I have never read any of them, although I would probably understand them if I did. Do you think that we have actually gone too far? That is why this issue of advertising has come up. You have got to capture a market and educate it, because choice has gone to the extreme.

Mr Weaven—It is interesting that it was so overwhelmingly unpopular with employers that provisions were then put in to ensure that to a very large degree it is a system of employer choice, not individual choice. But clearly there is a strong element of retailisation built into that choice, and it is certainly the case that a lot of people are not in a position to make good judgements and are not getting good advice. To that extent, if the retailisation model succeeds—and it may well over time—then future generations will look back and curse its introduction, because they will say they now have a system that has a major selling cost component that used not to be there. I think that on balance it is not good policy. But the word 'choice' is a very hard thing to argue against.

Senator SHERRY—Mr Chairman, I noticed in the submission, and I do not know whether you saw it, that your good friend and colleague Senator Minchin was extolling the virtues of the industry fund advertising campaign. He actually put a press release out about it. Did you read that?

CHAIRMAN—I did not. In our submission?

Senator SHERRY—No, this is in the submission from our current witnesses. They have quoted Senator Minchin, having acknowledged his praise for the campaign to 'compare the pair'.

CHAIRMAN—Far be it from me to criticise Senator Minchin!

Senator SHERRY—Yes, he put out a press release about it.

Mr Weaven—It only needs a seconder, Senator.

CHAIRMAN—In the context of those last couple of questions about the failure of funds: our previous witnesses suggested there should be compulsory insurance to protect members from trustee negligence. I suppose this was in response to the issue of whether there should be capital requirements and capital adequacy and so on. What is your view about how members should be protected against either a fund failure or a mispricing of units as occurred—although it was a government funded situation—in Western Australia?

Mr Weaven—There are real problems with unit pricing—I do think that. I think that it is fraught. It is a big cost issue. In general I would say that there has not really been an adequate case made to impose a capital adequacy increase across the system. We do have a fairly recent round of relicensing by APRA. Presumably that has looked at a lot of the issues. It is only being bedded down now.

In my own view—and I am not sure how widely I would be supported in this view—if there were any case at all for some additional protection, it would best be provided in the form of requiring funds to reserve for it to create an actual reserve within their fund. Funds have had reserves in the past. Generally speaking, that is out of vogue now. I cannot really say there is a case made to enforce it but that would be the correct way to approach that sort of level of comfort if it were believed that you really did need it.

CHAIRMAN—I recall that when this inquiry was established there was some criticism from the industry funds of the establishment of the inquiry and the necessity for it. But more recently, I understand a survey of industry funds has shown that 66 per cent have said they believe the inquiry has been worthwhile and valuable. I saw it published in an article recently.

Mr Weaven—I think people are feeling optimistic that the original list of terms of reference has turned out to be not reflective of the proceedings in that the overwhelming amount of debate and concern that have come out of the hearing have been about the financial planning industry. And most of the other terms of reference have been given a short shrift in our perception and that is probably the way it should be.

CHAIRMAN—As there are no further questions, Mr Weaven, Mr Whiteley and Ms Campo, thanks very much for your appearance before the committee.

Proceedings suspended from 10.56 am to 11.11 am

MAMMONE, Mr Daniel, Workplace Relations Adviser, Australian Chamber of Commerce and Industry

POTTER, Mr Michael, Director, Economics and Taxation, Australian Chamber of Commerce and Industry

GROZIER, Mr Dick, Director, Industrial Relations, New South Wales Business Chamber

Evidence from Mr Grozier was taken via teleconference—

CHAIRMAN—I welcome witnesses from the Australian Chamber of Commerce and Industry and the New South Wales Business Chamber. Do you have any comments to make on the capacity in which you appear?

Mr Grozier—The New South Wales Business Chamber is a recent amalgamation of the New South Wales Chamber of Commerce and Australian Business Ltd.

CHAIRMAN—Thank you. The committee has before it the submission of the Australian Chamber of Commerce and Industry, which we have numbered 66. Are there any alterations or additions you wish to make to the written submission?

Mr Potter—No, Mr Chairman.

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

Mr Potter—Thank you. I will go through our submission very briefly. In relation to term of reference No. 1 concerning uniform capital requirements, we do not think that uniform capital requirements should apply to trustees. Taking that in conjunction with reference 2, whether all trustees should be required to be public companies, we argue that these changes are not necessary because the nature of the trustee is quite different from the funds which are under administration, so the need for it is not there. Also it could be counterproductive in a couple of cases to impose those requirements. We also think that the nature of the trustees, particularly regulation under the industrial relations system, means that the need for trustees in that area is less.

With regard to reference 4, the role of advice in superannuation, we do not really delve into the issue of financial planners because we do not have a specific policy on that. We probably represent a lot of financial planners through our membership but we do not have a specific policy relating to that, so our submission talks about the role of advice given by employers. There are important regulations on giving financial advice. We think that these should be done in a way that is flexible particularly for employers who give advice in good faith. We do not think that they should be giving advice but, if they do, the compliance action taken against them should be flexible and take account of whether or not the employer is acting in good faith. In relation to member investment choice, we do support member investment choice but we do not

think there should be regulations either requiring it or prohibiting it. The best way to ensure that there is choice of investment is to give super fund choice.

With regard to costs of compliance, the committee will hardly be surprised to hear us say that we do support reductions in red tape on employers, on employees and on funds. Our submission focuses particularly upon the cost of compliance of employers. We do not support an increase in the superannuation guarantee and we have indicated support for the recommendations of the Banks review of red tape, which indicated there should be an increase in the super guarantee exemption threshold.

With regard to reference 11 about advertising, we do not think that there is particular concern here that advertising should be allowed by industry funds, particularly in the context of pursuing optimal scale of membership. There are two parts to reference 14. First of all there is the theft or fraud within the fund itself. We considered that the current prudential regulations should be adequate to deal with that. Then there is a separate issue about employer insolvency. The committee will know that the government has legislation before the parliament to give superannuation the same ranking as all other employee entitlements, so that is one way of addressing this issue. On the separate issue of whether super should be included in GEERS, we do not think that is the right approach at the moment. We think that more information is required before that proposal should be explored.

CHAIRMAN—On page 5 of your submission, you say:

The FSR regime has imposed significant costs and it has not been demonstrated that these costs outweigh the benefits.

Could you enlarge on that opinion? Also, what would you propose to change this situation with regard to the cost/benefit balance of FSR? What would you change in FSR? Do the refinements that were announced by the Parliamentary Secretary to the Treasurer towards the end of last year in any way address your concerns? I think superannuation was excluded from those refinements. Should superannuation be included in what Mr Pearce announced? They are all-embracing questions.

Mr Potter—It is not something we have looked at in detail. We have had feedback from our members that the Financial Services Reform Act is too onerous, but we have not had feedback on how it is too onerous. It is not something I can delve into in detail. We would be supportive of any move to reduce the red tape that exists in that area. Speaking in generalities again, we would probably support what the government did last year, and if further things were able to be done on superannuation, that would also be a good idea. But I am afraid I am not in a position to be able to go into the specifics of what should or should not be done in that area.

CHAIRMAN—You also refer to the unclear distinction between information and advice—I guess this comes within the FSR legislation. How do you think that distinction can be better drawn? By regulation or is legislation necessary, or is it simply better guidance from ASIC that is required to deal with that issue?

Mr Potter—It is probably a combination of all of those suggestions. Again, we have not got feedback from our members on exactly what should happen in that area. The concern is that it is

unclear at the moment, and so any means of clarifying it would probably be a good idea. Dick, do you have a position on this one?

Mr Grozier—I am not sure I would call it a position.

Mr Potter—Do you have any comments?

Mr Grozier—Not me personally, but as part of a trustee of an industry fund—and I have worked on occasion with the fund, particularly during explanatory tours concerning superannuation choice of fund—I know one of the problems that the fund was facing was the difficulty of distinguishing between information about things and phrasing that information in a way that seemed to come dangerously close or overstepped the line and became financial product advice of some kind.

It is my understanding that numbers of funds share this concern about the difficulty they have in being able to sensibly talk about superannuation as a product and the sorts of options which are available in a way that does not start to stray over the line and become product advice and perhaps even, on occasion, look a bit like personal advice.

Mr Potter—It is difficult for the average small business to know about these things. Our small business members are jacks of all trades and masters of none in terms at least of government regulation. They are meant to be able to comply with a vast array of government regulation and it is probably fairly difficult for them to know exactly what they can and cannot do in a lot of areas, including this one.

CHAIRMAN—You referred to employers unknowingly providing advice on superannuation. I guess this comes back to the lack of clarity and the distinction. You advocate leniency. Can you give us some examples of how employers might, or do, unwittingly contravene the law.

Mr Potter—A classic example would be where an employee asks an employer for their opinion about what is a good fund. An employee comes along to an employer for the first time and says, 'Oh, I don't have a fund chosen. What should I do?' The employer says, 'I've used this fund. This fund seems like a pretty good idea.' Is that providing advice or is it providing information? It could be seen as a grey area. It is more of an issue for small to medium sized businesses. I am pretty certain that larger businesses have processes in place to make sure that this does not become as big an issue. It is particularly an issue for employers who do not have a separate HR function and who do not have the knowledge and experience to be able to deal with this issue. Dick, do you know of any examples of this being a problem?

Mr Grozier—Not a lot of them. This came out during the choice seminars and a bit after that with phone calls from members. One issue that occasionally occurred was that an employee—it was, more often than not, a new employee bringing a fund with him or her—asked the employer why they had chosen the employer fund; that is, what persuaded the employer that that was a good fund. A number of our members expressed concern about how to answer those sorts of questions. That is the only obvious example, in light of what Michael has been talking about, that I can offer.

CHAIRMAN—An issue that has been raised in earlier hearings is the guidance APRA has put out to trustees in relation to their role in the investment decisions of fund members, as against the role of the member who makes a decision or the member in association with a financial adviser. To what extent should trustees be held responsible for member's investment decisions? Is there is a way in which this apparent confusion between the role of trustees in investment decisions and a member's choice can be clarified?

Mr Potter—That has not come up through our membership, remembering that we represent the employers, not the trustees. We know a lot about the trustee issues because some of our members are acting as trustees, but our prime role is not to represent our members as trustees; it is to represent them in the context of being employers. So it is probably not something I could comment on. Dick, is there anything you want to say on that?

Mr Grozier—Not particularly. I am aware that there is something of a confusion between the obligation to maximise the benefit for the members of the fund generally and the bases upon which an individual member may wish to make choices within a fund as part or all of his or her retirement portfolio but I cannot say that we have a particularly strong view on how to resolve that issue. I am not sure that we would be comfortable with a change which significantly altered the trustee's obligation with respect to the members of a fund generally.

CHAIRMAN—On page 7 of your submission you talk about the cost of compliance. You say that the mandatory contribution of nine per cent is a significant cost issue. Is that an excessive contribution that is required?

Mr Potter—We are certainly not calling for a reduction in the nine per cent. We are saying keep the nine per cent as is. We have not been arguing for a reduction, if that is what you are driving at.

CHAIRMAN—Generally the nine per cent is not regarded as adequate over the long term to provide an adequate retirement income. Is there a role employers can play in encouraging employees, particularly younger people, to make additional voluntary contributions to their superannuation?

Mr Potter—All three parties—the employer, the employee and the government—need to play a role in encouraging more contributions. We certainly do not support any further obligations being put upon employers to address that. I am stressing obligations here. Important things can be done to encourage employers to educate employees about their needs, and the government can directly educate employees. There is a super co-contribution and we have had significant changes in the tax treatment of super. Those are a couple of things which are being done from the government's point of view. If employees or members were more generally made aware of their ability to retire based upon the current amount of money they have in their account and their expected future income, it would be worth while to look at that and explore whether any of those things can be added to. I go back to my first point—we are not supporting any proposals to put new obligations on employers. We think that the obligations which have already been put on them are entirely sufficient in that regard.

CHAIRMAN—You also advocate raising the threshold for the SGC contribution to $800 a month and a quarterly calculation being applied to that. Is that going to leave casual and part-time employees vulnerable in the sense of their superannuation savings in the longer term?

Mr Potter—There is always a balance between the retirement income needs and the need to ensure that we are not imposing significant costs on employers which would then discourage the hiring of people who are around or below that threshold. There is always a balancing act. In the context of the actual number, my understanding is that it has not been changed for a number of years and so it is continually falling in real terms. We thought it would be worthwhile to have the threshold increase, making sure it is keeping pace with inflation. That is why we are talking about a periodic review. We thought using a quarterly exemption threshold would be a better way of dealing with people when there are significant fluctuations in their income.

Senator SHERRY—I was a little surprised that in the cost of compliance section on page 7 you did not refer to the additional costs of compliance on employers as a consequence of choice of fund. Would you accept that?

Mr Potter—Yes, indeed. We do support superannuation choice even though it does impose costs on employers. It was one of those things where we thought it was a useful reform to be engaged in even though it did have a cost on employers. We recognise those costs and we certainly support measures to make sure that those costs are not excessive.

I guess that is the context of what we were saying earlier about having a lenient compliance arrangement for employers who inadvertently give advice. That is one way of making sure that the compliance costs relating to choice are not excessively burdensome. There are other things that could be looked at, but we have not been proposing any particular changes to the choice regime to reduce the costs of super choice.

Senator SHERRY—Another issue I wish to raise with you is the extension of GEERS to cover superannuation that is unpaid in the event of employer insolvency. It is true, is it not, that superannuation is a statutory obligation? In fact, it is a bit more than that; some would argue, including myself, that it is deferred wages.

Mr Potter—That is a reasonable argument.

Senator SHERRY—Why shouldn't it be covered by GEERS?

Mr Potter—We are not ruling it out being covered by GEERS. We think that it is more important to get better data on the extent of the problem before jumping ahead and saying, 'Let's put it in GEERS.'

Senator SHERRY—I think that is a valid point. Can you point me to any data in this area? I have been looking in recent times and it is hard to quantify.

Mr Potter—I would agree with that completely. I think it is important for us to get the full data on the table before we launch into making policy in this area. There can be vastly different numbers bandied about based upon spurious data and good data. We just need to find our way

through that. We think that GEERS could potentially provide that information, but we are not really sure about that at the moment.

Senator SHERRY—The ATO annually remove from their register SG debt that is uncollectable. That would seem to me to represent a fairly good basis for some data in this area.

Mr Potter—Yes. That is another potential source of data. Of course, not all of that uncollectable amount would be due to employer insolvency. There might be other reasons for it. Taking that into account, it sounds like quite a useful data source.

Senator SHERRY—And probably it would include some levels of penalty provision. So it may overstate the problem, as distinct—

Mr Potter—Indeed. My understanding is that the SG converts into a tax if you do not pay it. It is not exactly the same as the SG if you do not pay it in, I think, 30 days.

Senator SHERRY—There is one remaining area: the payment under the choice of fund regime through a clearing house. We have been made aware that there are some difficulties that can present to an employer where the money is paid to the clearing house but arrives in the member's account after the quarter and therefore, technically, the employer can be in breach and a penalty apply. Do you have any comment on that particular issue?

Mr Potter—I has not come up through our membership as being an issue—but, if it is, it would definitely be something that needs to be addressed. I guess the general idea should be that the clearing house should be treated as though it were acting in place of the employer. The clearing house should be seen to be the one acting on behalf of the employer in relation to all of these obligations.

Ms BURKE—I have a question on choice of fund and small to medium firms having to pay five, six, seven or 20 or 30 different super funds. Do you have any feedback from your membership on the difficulty of handling that, paying in the money and keeping track of all the accounts and where it is all going? As you say, there are firms that probably do not have their own discrete HR department to help with those sorts of things.

Mr Grozier—During the period leading up to the introduction of choice it was perceived to be a fairly significant problem. I think the government's decision to require that the fund is in a position to accept contributions from the employer prior to it being a valid choice may have overcome at least a number of the fears. There is certainly muttered discontent from time to time about having to distribute this money across two or three different places, but I think the sorts of impacts that were concerning people prior to 1 July were significant mitigated by that policy decision of the government.

Mr Potter—The number of employees who have actually exercised choice is not large. What will probably happen over time as employees move from job to job is that there will be a gradual increase in the number of funds that an employer has to pay. It did not happen overnight and we are not expecting a sudden ballooning out of the amount of choice.

Ms BURKE—Yes. You arrive at your employer with your existing fund so why would you change funds; you would want to accumulate everything in the one fund.

Mr Potter—Indeed.

Senator SHERRY—I agree with that observation, except perhaps with the concern that during a period of high rates of return members tend to be happy and do not consider switching, and there is less propensity to switch. I suspect that in a negative rate of return environment or when there is a very low rate of return we could see a greater level of active switching.

Mr Potter—That sounds entirely reasonable. You would know that the stock market has gone negative over the past few days so you know that we may actually be entering that period right now.

Ms BURKE—I want to go to the issue of payment of the SGC. Often it is not because of insolvency, it is that people just do not pay it. It is an issue of concern that walks through the door of my electorate office on a fairly regular basis. A person has gone to check their fund and found that it has not been paid, or they have left the employer and it has not been paid. A lot of apprentices finish their apprenticeships and find that the money has not been paid. I am wondering what sort of advice and assistance you as an employer association give to people; do you say, 'You're obliged to actually pay the money'? I am wondering because dealing at the other end with the ATO to get it back is incredibly complicated and often not very successful. What advice do you give to your membership about their obligations to pay it and what sort of feedback do you get? Sometimes it is onerous to find that sort of money in a turnover.

Mr Potter—I will ask Dick to provide any further information, but I will say initially that we definitely do say that it is an obligation on the employers. I guess there is also a competitive neutrality argument here in that if you have one employer who does and another who does not, then of course the employer who does not is getting a nine per cent reduction in their costs, which is a little unfair on the employers who do. And then of course there is the separate issue of phoenix operations. There is no evidence that that is a big issue but it is still something that needs to be addressed. The government are doing something which is a bit of a step towards addressing that, which is allowing greater reporting to employees about their investigations of SG complaints. However, we do have a bit of concern that they may be telling employees too much, but we are working through that with the government and the ATO. Dick, would you like to say anything further on that point?

Mr Grozier—Not in any particular sense but, yes, we do make it clear to our members that it is one of the employment obligations. We have spent quite a lot of time in trying to educate them about superannuation generally, and I suppose it was particularly ramped up with the introduction of choice. I am not sure about the relative extent of the problem of nonpayment by defaulting employers as opposed to insolvency problems. It seems to me that there are a number of other issues in the superannuation arrangements which might be of a larger order of magnitude, such as the holding of multiple funds and the like. But undoubtedly there are cases of nonpayment and underpayment of superannuation contributions, just as there are cases of underpayment or even nonpayment of wages.

Mr Potter—I would like to add one thing to what Dick has just said, to expand upon a point that he touched on—that is, super choice is actually making people more aware of their super entitlements and their retirement incomes. So it is entirely possible that this means that employees are becoming more aware of the problems and are raising concerns about underpayment or lack of payment.

Ms BURKE—Are any of your members superannuation funds or businesses that would provide superannuation products?

Mr Potter—We do not represent businesses themselves. All our members are associations, and none of them tell us exactly who their members are so it is a bit hard for me to answer that question. Dick, can you say anything about that?

Mr Grozier—I cannot swear to whether we have people who provide some type of service across the spectrum of the superannuation industry; we certainly have numbers of property and business services members. I guess our most direct relationship, though, is because we are part of a trustee of an industry fund.

Mr Potter—Actually, that is a really important point. I think all of the state chambers are associated with industry funds and a number of the industry associations as well. For example, I was talking to Peter Collins earlier and the Hotels Association is associated with an industry fund, and there would be a lot of other ones that I am not exactly aware of. So while we do not exactly represent those funds themselves, our members are involved with those funds.

Ms BURKE—I want to go to the issue of advertising and your perception of disclosure of advertising and the advertising of funds and how that happens. You would have a different relationship if you were representing someone who is doing the advertising.

Mr Potter—We do not think there is a major problem with advertising. There are obvious concerns about whether people are using member funds to advertise. Some people argue that that does not meet the single purpose test. It is not something we consider a major problem. There are obvious limits to what can be done and we do not think there is a major cause for alarm in that area. The main point is, I guess, that we are sympathetic to the argument that advertising does enable greater economies of scale. We have seen that with some funds which have merged and then subsequently found out that their costs have been able to be reduced fairly substantially as a consequence of merging. That suggests that there are significant economies of scale, which is sympathetic to the argument that advertising increases size and therefore produces economies. Dick, did you want to say anything further on that?

Mr Grozier—Not particularly, only to say that I am not sure the question of advertising itself has motivated amalgamation. It is much more the registration process.

Mr Potter—I am just saying that the fact that funds have amalgamated and then their costs have gone down is sympathetic to the argument that there actually are significant economies of scale.

Ms BURKE—My final question leads on from that but is a bit irrelevant. Do you think we have too many funds in the marketplace? There are 300 funds out there. Are there still too many?

Mr Potter—My personal feeling is probably yes, but that is not an official ACCI position. Dick, do you have anything to add?

Mr Grozier—We certainly would not want to be supporting a change to superannuation regulation which resulted in a significant reduction in the number of players in the field. Whether 300 is an optimum number or not is a moot point, but you certainly would not want to see something which drove it down to, say, 25. There are two reasons for that. One is the obvious reduction in competition but also, presumably, the way that would be done would be by effectively imposing additional costs on funds to stay in a system.

Mr Potter—In that regard, if you are imposing too many regulatory costs on the system you will be forcing amalgamations. We think that amalgamations can and should occur but it should not be forced by the regulatory system. That is the underlying principle. Having said that, of course, we have self-managed super funds anyway, so if you actually did have a reduction in competition you might just have a huge ballooning out in the self-managed super funds. That is not necessarily a good or bad thing, but it could offset any alleged benefit from a reduction in the number of publicly available funds.

CHAIRMAN—If there are no further questions, thank you very much for your appearance before the committee and for your assistance with our inquiry.

[11.44 am]

CLAUSEN, Mr Christopher John, Chief Executive Officer, Health Super Pty Ltd

CHAIRMAN—Welcome. The committee has before it your submission, which we have numbered 69. Are there any alterations or additions you wish to make to your written submission?

Mr Clausen—No.

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

Mr Clausen—Thank you for allowing me to give testimony today. Health Super was established over 40 years ago, in 1966, as the Victorian statutory body, the Hospital Superannuation Board. It was originally a public sector fund. In those days we provided superannuation services only to employees of Victorian hospitals. On 1 January 1999, we became Health Super Pty Ltd, a regulated superannuation fund under federal law. Today, we are one of Australia's leading superannuation service providers for people working in the health and community services sector. We have a limited number of members outside the sector, and we are an 'all profits to members' fund.

Although an industry fund, Health Super has a very different heritage, business model and governance structure to the IFS-badged funds. Generally, it is an older and more complex fund than those in the IFS group, and its peer or like funds include Equipsuper, Vision Super, VicSuper, UniSuper and Legalsuper. We hold an RSE public offer licence and an AFS licence to give general advice. Our trustees are not allowed to sit on the board of other competing funds, and we liken it to and find it hard to believe that you could have the same person on the boards of both a Coles and a Woolworths.

The fund primarily has its geographic base in Victoria, with over 200,000 members in accumulation and defined benefits superannuation, life pensions and allocated pensions. We also have a life cycle default option, or strategy, that effectively puts people in long-term high growth up until they are 50, when we write to them to ask them if they want to change their investment option. If not, we dial it down to medium-term growth, which is a 70 growth-30 defensive split, until they are 60. If they then decide to stay in it beyond 60, it will be dialled down to fifty-fifty.

The fund is self-administered, with approximately 100 people on the trustee and administration staff. Investment management other than cash is outsourced—we are a manager of fund managers model—and we have about $7 billion worth of funds under management. The wholly-owned subsidiary, Health Super Financial Planning, was established in 2001 and offers Health Super fund members and their families and nonmembers a complete financial solution in addition to their super. The primary reason for its establishment was to ensure that Health Super fund members obtained quality and affordable financial advice, particularly the defined benefits members.

Health Super Financial Planning is a full-service financial planning business. It carries an AFS licence to provide personal and general advice. Its advisers are salary remunerated. Health Super fund charges an annual administration fee of one per cent on its allocated pensions up to a cap of $4,000, and half of that fee is paid to Health Super Financial Planning, which provides ongoing advice to our allocated pensioners. If they have needs in relation to their benefits, draw downs, social security or tax implications, they can come back and seek free advice. So that one-half a per cent pays for that. All profits are retained within the fund, and I would like to stress that it is a wholly-owned subsidiary. It is a venture capital investment of the fund itself. The fund has put in $750,000 as venture capital into Health Super Financial Planning.

The reason we put in a brief submission was that some financial planners said that here was a super fund that was paying one-half a per cent commission. We have been approached by a number of financial planners to say, 'We would like that one-half a per cent.' We have declined their offers because we believe it is retained in the Health Super business for the benefit of all members. That is why we have not paid that to external parties, and it is for the ongoing advice of our allocated pensioners.

CHAIRMAN—Thank you very much for your opening statement. Can you understand that there might be an element of confusion in relation to the claim by a range of industry funds that they do not pay a commission; that, not knowing the differences between your fund and those funds, they regard the advertising programs as misleading?

Mr Clausen—As I said, we have a very different model to those in the IFS camp and in other funds. A lot of industry funds have different models. It is characterised in our PDSs and for the allocated pension in the PDS for the fund as a trail commission. I would like to think of it as a fee for service.

CHAIRMAN—When you say it is paid on the allocated pension, is that on the capital sum that is providing the pension or on the actual pension that is paid?

Mr Clausen—On the capital sum.

CHAIRMAN—I notice in your opening remarks you mentioned that you have most of your members' funds invested in a 70-30 split in a growth fund until age 60 and then—

Mr Clausen—It is actually a 90-10 split. We put them in the long-term until they are 50. Mind you, they have the option at any stage to make their own member investment choice.

CHAIRMAN—Does this mean that you are more actively engaged in managing members' funds than perhaps a lot of the industry funds? From our information, about 90 per cent of industry funds seem to have their members' funds in a balanced fund.

Mr Clausen—With our asset consultant, we did some research in 2002-03. The bulk of people do not make a member investment choice as such, and that is still our experience to date. There are some people who are financially astute who make that member investment choice, but I do not think the vast majority do. We also looked at the demographic of our membership base, and we believe that in the long term growth assets will outperform defensive assets, hence the reason for establishing a life cycle default strategy.

CHAIRMAN—I am commending you for that; I am not being critical. I am actually comparing your fund with what I understand is the position in the bulk of industry funds where, as I said, 90 per cent of members' funds are in balanced funds, which I would have thought is not a very good situation, particularly for younger people.

Mr Clausen—Correct. That was the way that we viewed it, and we did some analysis with our asset consultants advising on that. Watson Wyatt are a very large asset consulting firm. They consult both in the UK and in America, and we took their advice on that and implemented that program.

CHAIRMAN—Are you able to speculate as to why a broad range of industry funds perhaps do not as actively manage their members' funds in the way that you do?

Senator SHERRY—I do not think it is just industry funds. I think most retail funds would have a similar type of default strategy to most industry funds.

Mr Clausen—I think there are only a couple of others. I think Mercer have a product that offers the same, but I do not know that there are too many more in Australia.

Senator SHERRY—I wanted to pick up on the lifestyle feature, because it is unusual. It is not a common feature, and I am not sure I agree with it. If a person gets to, say, age 60 and if they are going to live for another 20 to 25 years, surely on the basis of long-term rate of return equities would still give them a higher rate of return, so why lifestyle at that point?

Mr Clausen—We actually changed it. The asset consultants initially said it should be lower than that and we said, no, because it is not about retirement—and I think the superannuation funds have been as guilty as anyone in talking about retirement. It is not about retirement now; unfortunately it is about when you pass away. It is a much longer time horizon, I accept that. But, as I said, we send all our members the information, and if at any stage they say, 'Well, no, I'm in great shape; I'm going to live until I'm 80 and I want to make my money work harder,' they can stay in the long term, the medium term or whatever until that time. They have that option. What we are saying—and as Senator Chapman said—is that in the early years they have perhaps 30 years of playing football, as Garry Weaven might have said, or whatever else and not concentrating on financial matters.

Senator SHERRY—Did you run this approach past APRA? Was there a problem with the sole purpose test or the prudent person principle?

Mr Clausen—I do not think so. It was some years ago, but I do not think there were any problems with it.

Senator SHERRY—I suspect that there is not a problem.

Mr Clausen—No.

Senator SHERRY—There is no prescribed balance for a default fund; it is not in law; there is no regulation. It is the decision of the trustees. If you look at the evolution of the default

investment, it is strikingly similar across all funds—not just industry funds but corporate funds and retail funds—with very little variation.

Mr Clausen—In all honesty, we have to hark back to 2001, 2002 and 2003. They were not particularly good years. We tried to change our asset mix so that in the growth areas we have some alternative assets so that we do not have quite the same volatility that we had then. But there is a risk with it, because you come to those times when markets turn down.

Senator SHERRY—You have had the opportunity to rebut what is a gross misrepresentation in the reporting of your so-called commission.

Mr Clausen—I would stress that is paid to the company, not to—

Senator SHERRY—That is what I was going to get to.

Mr Clausen—Sorry.

Senator SHERRY—Where does the money go to?

Mr Clausen—It goes to the company. The planners are salaried planners.

Senator SHERRY—I understood that. It goes to the company. It then becomes part of reducing the overall operational cost of the general administration.

Mr Clausen—Running the financial planning business.

Senator SHERRY—Did you respond to the report in the *IFA*?

Mr Clausen—Yes, we did. We rang the reporter and told her that it was incorrect and had it changed.

Senator SHERRY—What is your governance structure at the moment? You mentioned your evolution. Who owns the fund?

Mr Clausen—The members own it.

Senator SHERRY—So you no longer have any link with the government as such?

Mr Clausen—No. We have four employer directors, four member directors and an independent chair.

Senator SHERRY—Who owns the company? Who are the shareholders?

Mr Clausen—The shareholder is the chairman on behalf of the members. There is one share.

Senator SHERRY—That is a fairly unusual model.

Mr Clausen—It might be.

CHAIRMAN—You mentioned that the planning arm has salaried employees. Are there any incentives of any sort offered?

Mr Clausen—I am here representing Health Super the fund, but I am sure that there are key performance indicators in terms of writing plans, servicing members and giving seminars. They do our retirement seminar program in metropolitan Melbourne and country Victoria, which is about educating our members. I am sure that there are KPIs to do with those things, and part of that would be how much business is written.

CHAIRMAN—You mentioned in your opening remarks that the planning arm was established with a $750,000 investment from the fund.

Mr Clausen—That was injected over a period of time—it was not all up-front.

CHAIRMAN—Are you able to tell us what return the fund is getting on that investment?

Mr Clausen—I am not sure that I am qualified, but they turned a small profit last year and we expect a larger profit this financial year.

CHAIRMAN—So it is not necessarily proving to be a profitable investment?

Mr Clausen—It is following the J-curve of most venture capital investments. It has probably taken us a little bit longer than we would have liked. But I would also hasten to add that in those early years markets were down and the last thing that people were interested in was financial advice. We think that it works well from a tiered advice point of view because the fund gives general advice and, if the member wants planning or retirement consulting, they then go to the financial planning arm and get that advice. If they want to go further and look at the holistic plan, involving not just super but all their other assets and those sorts of things, then they can get that from the financial planning service.

CHAIRMAN—When you say the market has been down, the last two or three years—

Mr Clausen—They have been sensational. I was talking about the first couple of years of Health Super Financial Planning.

CHAIRMAN—So you are not sure of the more recent contribution to the profit of the fund that the planning arm is making?

Mr Clausen—In 2005-06 it turned a profit. In 2006-07 it aims to turn a larger profit.

CHAIRMAN—How is the relationship between Health Super and Health Super Financial Planning disclosed to members who are seeking planning advice?

Mr Clausen—It is fully disclosed in the PDS documentation.

CHAIRMAN—As I raised earlier with Mr Weaven, and as has occurred earlier in this inquiry, there have been concerns raised about the need for greater transparency between the funds and their service providers. Do you accept that there is a need for greater transparency and that perhaps disclosure of those relationships has not been as substantial as it could be?

Mr Clausen—We believe it is fairly transparent in our financial statements as they currently stand, although a $750,000 private equity investment is relatively small in the overall scheme of things, so probably gets lost in the wash. Certainly we declare our directors' remuneration and all those sorts of things. We operate within the bounds of proper disclosure—AAS25 and any other acts.

Ms BURKE—If a member wants the full gamut of planning, would they have to go to an external planner or can Health Super Financial Planning provide the whole lot?

Mr Clausen—Absolutely.

Ms BURKE—Do they operate under a list of advice and product?

Mr Clausen—They do have a product list.

Ms BURKE—Hopefully, that would include your product?

Mr Clausen—It does. I hasten to add—and I have talked to the financial planning people about this—that if they had, let us say, two industry funds and a person was in an industry fund, unless there were circumstances that were specific for that person's financial needs there would be no need to move that superannuation to our fund.

Ms BURKE—You have other industry funds on your list?

Mr Clausen—Yes, we do.

Ms BURKE—You have a mixture of retail and industry funds on your lists?

Mr Clausen—Yes, and we have other allocated pension products as well.

Ms BURKE—You would be unique in that. There are not too many other people with lists that list industry funds.

Mr Clausen—I must say that I am not operating on a day-to-day basis in financial planning but I do know that if they have two industry funds and there is no reason why a member should move to Health Super they would not move them. I would like to leave it at that.

CHAIRMAN—What is the basis for charging for that advice?

Mr Clausen—It is an hourly rate—$130 plus GST per hour for members; and $150 plus GST per hour for nonmembers.

CHAIRMAN—It is a straight fee for service.

Mr Clausen—Yes. If they decide they need an allocated pension and if it is a Health Super allocated pension then they pay one per cent and half of that is rebated back to the financial planning business—not to the planners.

Ms BURKE—So the planners do not get the commission for that?

Mr Clausen—No.

Ms BURKE—What is your remuneration arrangement with others on the list then?

Mr Clausen—The fund itself does not pay external people.

Ms BURKE—So the fund itself would not pay any member's fees into commission with somebody else?

Mr Clausen—No. That is why, when a planner rang up and said, 'Why wouldn't I get the half a per cent if I recommend your allocated pension?' we said no, because that goes against the 'all profit for members' philosophy of an industry fund.

Ms BURKE—Do you know how many members are utilising the planning service?

Mr Clausen—I think each planner does about 300 appointments a year, and we now have four planners. We also have one or two members a day just lob in and say, 'I'd like to talk to someone about'—whatever.

Ms BURKE—Do many of your fund members stay with the fund in retirement—that is, use your fund as their allocated pension?

Mr Clausen—Yes, increasingly so. I am not sure about the actual percentages but there is a sort of comfort: 'You have looked after my money and my interests for these years; I understand that you have a financial planning business that charges an hourly rate so we will go and talk to them.' The financial planning business has also done some second opinions from other financial planning businesses. I think that relationship is built up over a period of time—you are safe, you are secure and you have looked after our interests for a long time. I could not really give the percentages, as such.

Ms BURKE—Do you advertise both businesses: the super and the planning?

Mr Clausen—We do, more so the fund than the financial planning. We normally put a page or two in our annual report to members or in *Talking Super*, as it is called, or in something like that. They run the retirement seminars program for us, effectively, which gives the members great information—Centrelink benefits, taxation implications, the pre- and post-retirement products and all those sorts of things. It is a fairly good program.

Ms BURKE—How do you advertise the fund?

Mr Clausen—I am happy to say we ride a little on the coat-tails of the IFS advertising. We believe in face to face where possible—it is always difficult with 200,000 members. We have our own call centre. We have our own account managers who service our employers and our members—we are fairly big on that. We advertise in nursing journals and union magazines and all those sorts of things, but we have not as yet ventured into TV advertising.

Ms BURKE—You advertise within the sector that is a catchment for you. You advertise within the health networks and areas like that.

Mr Clausen—Correct, and we service that with our account managers, planning consultants and call centre people, who are in our administration.

Ms BURKE—Would your end-of-year accounts demonstrate some spend on advertising?

Mr Clausen—Certainly.

Senator SHERRY—Did you say you were self-administration?

Mr Clausen—Yes, and we are defined benefit as well, which is beautiful for—

Senator SHERRY—What is the proportion of members in DB versus DC?

Mr Clausen—We have about 6½ thousand active defined benefit members, 4,000 deferred benefit members—that is, where they have chosen to leave before their vesting—and 3,700 life pensioners out of our 200,000 members.

Ms BURKE—Is the defined benefit shut off now or is it ongoing?

Mr Clausen—It is effectively shut. There are some members who can take the option, but, to all intents and purposes, it is shut.

CHAIRMAN—Did you say there are about 1,200 planning appointments a year?

Mr Clausen—Roughly. That is if all four planners are working full on.

CHAIRMAN—And that is out of 200,000 members?

Mr Clausen—Yes.

CHAIRMAN—It is not utilised to a great degree by your members.

Mr Clausen—It started off very slowly. When we started the business, they were not doing 300 per planner, but it has grown significantly since then.

CHAIRMAN—Are they spending about five or six hours on each client or is there a lot of idle time being funded?

Mr Clausen—I could not answer that, but it certainly has improved significantly from when it first started. The other point I would like to make is with regard to something Mr Weaven said about our returns. I acknowledge that our five-year returns were not too good, but in financial year 2004-05 our long-term option over three years returned 9.3 per cent versus the median of 8.7 per cent and in 2005-06 financial year the three-year return was 15.5 per cent against the median of 15.5 per cent. Perhaps we are one of those funds that, having restructured in early 2004, are reaping the benefits of that now. I think we are one of the better performing funds.

CHAIRMAN—Thank you very much, Mr Clausen, for appearing before our committee.

Mr Clausen—Thank you very much for having me.

[12.09 pm]

COLLINS, The Hon. Peter, AM, QC, Director, HostPlus

DALEY, Mr Brian, Member Director and Deputy Chair, HostPlus

ELIA, Mr David, Chief Executive Officer, HostPlus

ELMSLIE, Mr David, Independent Chair, HostPlus

HINKLEY, Mr Bob, Independent Director, HostPlus

ROBERTSON, Mr Mark, Employer Director, HostPlus

CHAIRMAN—Welcome. We have before us as a committee your submission, which we had numbered 63. Are there any alterations or additions you wish to make to the written submission?

Mr Elia—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.

Senator SHERRY—Chairman, I formally record my interest as a fund member—not active, but I think I should put it on the record anyway.

CHAIRMAN—Are you doing well?

Senator SHERRY—Very well, the stats show.

Mr Elia—Extremely well. HostPlus thanks the committee for the opportunity to present evidence regarding the operation and structure of the superannuation industry. By way of background, HostPlus is the national superannuation fund for workers within the hospitality, tourism, recreation and sporting industries. We invest in excess of $5.7 billion for approximately 780,000 members, the majority of whom are under 40 years of age. I should also add that we have in excess of 38,000 participating active employers who contribute to the fund.

HostPlus not only is a leading industry fund but currently boasts two significant awards, the SuperRatings 2006-07 Fund of the Year award and the *Money* magazine 2007 Best Super Fund Manager award, as part of the Best of the Best awards. I should add that both these awards are open to all types of superannuation funds, including the retail funds, so we are very proud to be judged a leader in the superannuation industry.

In relation to our investment performance, our balanced option, which has had a fair bit of publicity—and I suspect it is something that we will talk a little bit more about—had returned 11.22 per cent to its members over the previous five years as at 31 January 2007. According to the SuperRatings survey of fund returns, this places us in the top 10. In fact, that particular rate of return puts us at No. 2 as compared to other funds, judged against retail, public sector and industry funds.

We would like to make two brief points about the issues relating to the committee's inquiry. Firstly, on advertising, HostPlus does actively promote the fund through its participation in the 'compare the pair' TV campaign and its sponsorship of the NRL team Melbourne Storm. These promotional activities are undertaken to sustain and enhance our membership base through building the brand and brand awareness. That largely enables us to build on the economies of scale which in turn provide us access to competitive management and administration fees, which, as I think you will all agree, is ultimately in our member's interests.

Our strategy is tailored to reach our membership, who are predominantly in the 21- to 40-year age category. They are typically disengaged with their superannuation, and it is difficult to reach them solely through some of the traditional channels, such as the annual members statement and annual reports. So building our brand through TV advertising and through our association within the sporting industry is critical to our activity in the same way as administration and investment management. Advertising is a legitimate cost, just like any other costs that the fund incurs, whether they be administration or investment costs. It should not be considered any differently. As we have heard previously from others who have discussed this issue, its primary objective is to retain our existing members, build on the existing membership base and grow our funds under management, which all lead to greater economies.

Certainly a good case in point as it relates to HostPlus is that we were able to increase the level of insurance benefits that our members received by a minimum of seven per cent last year at no additional cost to the members. We were able to negotiate with our insurer increased benefits, and it did not cost our members any additional moneys whatsoever. I think this really highlights the true nature of what you can do if you have economies built into your membership base.

The other point we would like to make is that members pay for advertising costs directly or indirectly regardless of a fund's business model. Comparisons can be drawn with the Commonwealth's and the state governments' numerous advertising campaigns, where the taxpayers ultimately pay for the advertising costs associated with the government informing their market about the benefits of many of their initiatives.

Senator SHERRY—Advertising or propaganda?

Mr Elia—You be the judge of that.

CHAIRMAN—That was a pejorative comment, Senator Sherry.

Senator SHERRY—We are about to see another big super one, I notice. I got the figures the other day at estimates.

Mr Elia—Fund choice is based on an informed market and a level playing field for all participants in that market. It requires all profit to go to member funds, and to fund the cost of advertising from resources external to fund assets effectively operates as a ban on those funds being able to advertise. From our inquiry, such bans would place the fund in the same boat as the tobacco industry, which is the only industry that we are aware of that is not permitted to advertise its products in Australia. It would certainly compromise all the basic principles of a free market economy. An inevitable consequence of such a ban would be a significant reduction

in competition in the industry, and that would be detrimental—I think you would agree—to all our members.

Our final opening comment draws attention to the area which we believe is in most need of reform in superannuation, and that is commission-remunerated financial planners. Despite the fact that HostPlus is undeniably a market leader in superannuation, we are not aware of any financial planner or dealer group that recommends us to their clients. There is a reason for this: we do not pay them a commission. Despite the fact that we are top rated by all superannuation ratings agencies, we are not aware of any financial planning house that has HostPlus on their list of approved products. The regulation of advice does need urgent reform so that when a consumer gets financial advice they know that the adviser is acting in their best interest rather than recommending a product because it pays a commission.

Payment of commissions represents a fundamental conflict that cannot simply be managed by disclosure or any other means except avoidance. Although financial planners are required by law to meet certain requirements under the Corporations Law, we are constantly seeing examples where those obligations have been breached across the financial services industry. I am sure that the committee is aware of some of those examples. We generally believe that the payment of commissions, or soft dollar arrangements, should be barred in relation to SG contributions and that financial advisers should be subject to a duty to act in the best interest of their clients. This is the same standard of care that is imposed upon a trustee.

We have often heard the FPA and its members say that the underlying reason given for not recommending industry funds is due to a lack of underlying information about industry funds' investment structures and their investment options. However, such information is readily available. For example, it is readily available at www.chantwest.com.au, from Chant West financial services, which is a specialist superannuation research and consultancy firm. Regarding its research, Chant West says that it:

... provides the accurate and comprehensive research that advisers need. With access to CorporateSuper Research, PersonalSuper Research and AppleCheck, together with the associated modeling tools, they and their paraplanners can research and compare over 140 super products including industry funds, corporate funds, personal funds and public sector funds.

They claim:

This winning combination enables advisers to deliver excellent client service, satisfy their compliance obligations and improve their productivity.

They also claim:

One in three advisers in Australia now have access to Chant West research ...

I should add that Chant West is not the only provider of such research, with SuperRatings also providing a similar service.

So, despite this widely available information on our fund, and I think other industry funds as well, it is our strong belief that commission based financial planners do not recommend us to

their clients simply because we do not pay them a commission. The question that we often ask ourselves is: how long can they continue to ignore us, or, as it has been put to me, the big elephant sitting in the same corner? We are happy to take questions.

CHAIRMAN—Perhaps I could start with your comments on commissions. One of the arguments in favour of commissions—you probably heard this in earlier segments of these hearings—is that they allow low-income or low-contribution members of funds to receive advice which they would not otherwise be able to receive on a fee-for-service basis—that there is an element of cross-subsidisation through the commission structure that allows lower income people to get advice. What is your response to that?

Mr Elia—I think firstly we would say that low-income earners are the least likely to be engaged in their super and probably the least likely group to really understand the nature of the commission structures built within the existing advice model. I think it is probably a narrow view to assume that the only way that low-income earners get advice is to pay commission. We have certainly embarked on a number of initiatives to try to provide low-cost, meaningful advice to our members.

We have included in our submission that we now do give our members an opportunity to have the cost of financial planning advice as it relates to superannuation related advice deducted from their member accounts. We have built in a number of safeguards. The first issue is that members must have at least $2,000 to $2,500 in their accounts before they can access the service. The way in which members are charged for the service is upon delivery of that advice. It is not an ongoing trail. There is not an ongoing annual deduction made from members' accounts. It is a one-off deduction based on the type of advice that is requested and required.

I am happy to share with you some of the fees. This is a flat fee. If a member wishes to receive member investment choice advice, that is a $220 flat fee. If it is in relation to insurance, likewise; superannuation contribution eligibility, $220; super-splitting advice, $220; and super retirement projections, $110. Members do have the capacity to receive a superannuation related financial plan for the cost of $550 and that is a flat charge.

CHAIRMAN—One of the ways that it has been suggested that we might overcome this problem of conflict of interest is to have what you might call three categories of advisers or financial planners—those who are clearly seen to be representing a financial institution and marketing that financial institution's products, who should be branded; those who perhaps operate on a basis of a combination of commissions and fee for service; and those who are clearly fee for service, who could be regarded as genuinely independent advisers. Do you think that would go some way towards overcoming the problem? If people walk into an AMP branded adviser, they know to expect—as they would expect to get a Ford if they walked into a Ford dealer—to get an AMP product recommended.

Mr Elia—I think the difference with the car dealership analogy is that you know that you are actually dealing with a salesman. If you walk into a dealership to buy a car, you know that you are going to have some interaction with somebody who is actually trying to sell you something. I think the fundamental issue is that this industry really needs to decide whether it is going to develop into a profession, with all of the professional obligations that come from being part of a professional organisation. I think that is a start.

As to the licensing in terms of the model that you have alluded to, I think it is appropriate to certainly consider that. I think we do need to ensure that, where people are simply selling or acting as agents on behalf of some of the major retail companies and flogging product, they are singled out and there clearly needs to be clear disclosure in that regard. I think that is a start. We obviously need to understand a little bit more about how the model will actually work in practice. But, as to clearly highlighting salespeople for professional advisers, I think there is certainly some merit in that.

CHAIRMAN—I suppose the view would be that you would still regard them as professional advisers in the sense that they would be providing the best advice within that particular financial institution's range of products, but you would not necessarily expect them to advise outside of their range of products. You are still expecting them to give some professional advice but within the range of products under that badge, as against a completely independent person who would be providing advice across a range of products.

Mr Elia—To use the car dealership analogy, it is the salesperson probably selling you a different type of car but it is still branded as a Ford. The distinction is nevertheless the same. They are selling a product. If we are talking about advisers acting in the interest of their members then clearly there needs to be some scope for them, obviously, to consider products that are outside the product list—because that is really what we are alluding to—that they would be advising on.

Ms BURKE—The problem, though, at the moment is that a lot of people go to see a financial planner who has a title of something else. It does not link; it does not say, 'I am AMP.' They have gone into this shopfront and they think they are getting independent advice, and then they are given a range that offers AMP or AMP. That is the problem at the moment. At the moment, people do not actually realise the relationship between the planner and the product they are selling a lot of the time.

Mr Collins—That is exactly right. There is nothing wrong with being an agent.

Ms BURKE—No, so long as you disclose.

Mr Collins—It is not a crime to be an agent and to be proud of the product you sell—or the range of products you can offer—provided it is disclosed that you are selling for a particular agency. If you claim to be a financial planner, that term has a connotation of objectivity and impartiality; and the term agent does not. So agent is actually a better descriptor than financial planner.

CHAIRMAN—Is this a problem that has developed under FSR, where we have tried to have a standard licensing approach under the legislation? Under the old system you had insurance agents and life insurance agents and you pretty well knew where people were coming from and who they were representing.

Mr Collins—I think part of the problem is a rebadging and a desire on the part of financial planners to reposition themselves in the market and to present themselves as an independent profession whereas many of them are simply agents, and there is nothing wrong with being an agent.

Senator SHERRY—I would like to ask about some of those issues that the chair started raising. Is the advice model that has just started operation budgeted to stand alone in terms of covering its operational costs over time? I do not want your budget figures, but is there any cross-subsidisation in those fees that you have outlined?

Mr Elia—There is initial investment on our part. Beyond that you would like to think that over time you would at least be breaking even. The model itself is not based upon generating a profit; it is about delivering a service. Given our existing model, we are largely focused on that. It is about the existing membership. It is about providing a service to the existing membership as distinct from having a financial planning business that is focused on acquisition.

Senator SHERRY—Are the people giving advice internally-employed planners or are they contracted?

Mr Elia—They are embedded planners. They are industry fund financial planners. You heard earlier on about the collective approach that has been adopted. That really does go some way towards reducing the cost of providing that service.

Senator SHERRY—When this approach has been discussed with some of the other funds they have raised issues of difficulty with FSR. This has been signed off on by ASIC.

Mr Elia—We have received sign off by APRA in the first instance, and there is no reason to believe that this should cause any concern with the regulator. I should add that we are actually not the first fund to offer this type of service. Given that we are a high-profile fund, we seem to be always in the headlines; but there are many other funds that are providing a similar type of structure. Certainly in our discussions with the regulator, they are very comfortable with it. As I alluded to earlier, there are sufficient safeguards around the process to ensure that members are getting the service for which they are paying.

Senator SHERRY—I am interested in the cost structure you have outlined. It has been claimed that commission is a much easier way to recover moneys from a low-income low-balance person. That is the claim that is often made. You may need to take this question on notice. Would it be possible—and how, in your fund's considered view, would it be possible—to reduce the cost that you have outlined in terms of the flat-fee application for different limited advice? Do you, for example, face a more costly provision of advice because of FSR? If so, how and why? How can we perhaps strip down the elements of the cost that you have to cover off on in providing your product?

Mr Elia—I will make a couple of comments in relation to that. The first issue is that we are having to go through licensed financial planners in order to provide that advice. We do have an account management team; we have a significant focus on education. ASFA's position is one that we do support. A narrowing of the definition of personal advice would go some way towards allowing us and our existing staff and existing resources to provide that limited advice that is probably necessary for our members. That could actually come from the existing resource base that we have built up.

I think the approach that was highlighted yesterday, a transaction based approach, is probably one that we ought to be considering if somebody wants some basic advice on salary sacrifice,

rather than our having to get them to have a chat to a financial planner. We think we have the capacity and we think our staff have the skill set to provide that advice, but they are not licensed to do so.

Senator SHERRY—So you would not suggest that they need to be?

Mr Elia—I would not suggest that they would need to be.

Senator SHERRY—That is interesting. It is somewhat like trying to break a legal monopoly, such as a lawyers' monopoly, or a monopoly in the medical area. I refer to the issue of approved product lists, which I have raised on a couple of previous occasions. I do not know whether you were here to hear this, but it seems to me to be almost like a monopoly construct: the dealer group decides what is on the list, there is no industry fund and therefore the planner cannot recommend because it is not on the list in the first place. It becomes a circle of your fund and many others being prevented from being on the approved product list. As we have discovered, even when they are on the product list—although I think you have probably been removed from AMP's—

Mr Elia—We were on it in the first instance but then we were removed; that is exactly right. From our perspective, product lists are a convenient way to lock us out.

Senator SHERRY—As a matter of interest, when you were on AMP's product list did you get anyone referred to you?

Mr Elia—We are not aware of one single member being recommended to us from an AMP agent.

Senator SHERRY—Mr Chairman, I have some questions on lifestyle. I will come back to that area.

CHAIRMAN—Thank you, Senator Sherry. On that issue, Mr Elia, given the increasing number of advisers who are now operating on a fee-for-service basis, there is no disincentive for them not to have you on their product list. Have you noticed whether any of those advisers are putting you on their product lists?

Mr Elia—We are not aware of any dealer group or financial planning house having us on their approved product list.

Ms BURKE—Even if they were a fee-for-service adviser, they would still get a commission when they sold the product, so it would become that next step: they sell a product and they get a commission, so they are still not going to sell a product that is not giving them a commission.

Mr Elia—Conceivably, yes.

CHAIRMAN—And they rebate that fee for service to the client usually?

Ms BURKE—They may.

Mr Elia—Not the trails.

Ms BURKE—Yes, not the trails.

CHAIRMAN—You indicated how well your fund has performed over the years. I refer to the issue of 90 per cent of fund members effectively being in a default fund, with that generally being a balanced fund rather than a growth fund. Is your default fund essentially a balanced fund?

Mr Elia—Yes, it is. I wish to understand the nature of the question. So, Mr Chairman, the implication is that because the majority of our members' funds are sitting in a balanced fund therefore they are worse off than if their funds were—

CHAIRMAN—in a growth fund. It is particularly so as you said that most of your members are younger people, so they are looking 30 or 40 years out.

Mr Elia—I think the FPA may have made that claim in their submission.

CHAIRMAN—Health Super, the previous witnesses, also indicated that they are orientated towards a growth fund rather than a balanced fund.

Mr Elia—I am delighted to say—and I think five years is probably a reasonably good period in which to assess the performance of these investment options—that I have two numbers that I would like to share with the committee. As at 30 June 2006, the five-year return for our balanced option—so that is over five years—was 9.2 per cent while for the same period—this is compared to the shares-plus option—that option delivered 8.3 per cent, so you are actually better off over that period of time. I do have the updated data. This is the most recent information that I have available, and this is as per the super ratings data as well. As at 31 January 2007, the HostPlus balanced option, the default option where 90 per cent of our members' funds reside, delivered 11.22 per cent, as compared to the shares-plus option of 10.8 per cent.

Senator SHERRY—I think I know why, but what explains the difference?

Mr Elia—There are a couple of things, I suppose. I have sat back here. I think there has been this perception that trustees of industry funds simply set the asset allocation strategy, sit back and do nothing. The reality, and one of the underlying reasons why industry funds have been able to outperform their retail competitors, is that trustee boards do take active decisions and are involved in reallocations of their strategic asset allocation and the rebalancing decisions that are made. There have also been decisions that have been made that have allowed industry funds to pioneer investments in infrastructure and in private equity. They have taken the lead in relation to those types of assets, where we now see the rest of the herd in the retail funds aggregate and move into.

There are some underlying reasons as to why there is the issue of the balanced option. In our case, I want to emphasise the point that the board of the trustee of the fund does sit back and examine the underlying demography of the fund. It looks at its membership base, it looks at the age, it looks at the needs and it sets the appropriate objective to meet the needs of the broad-based membership, of the overall membership, in that regard. Regarding this whole debate about

a balanced option, well, I can show you a number of balanced options and you will probably be able to highlight and see that there are different allocations to Australian equities and different allocations to all the asset classes in that regard. We have to be careful about this term 'a balanced option' and assuming they are all fundamentally the same, because that is not the case. As the profile of the fund continues to change, and this is part of the executive's role and part of the trustee's role, we will modify our asset allocation to reflect the needs of the membership.

Mr Collins—I wish to add very briefly to that. As one of the two new independent directors of HostPlus I want to say that our role as trustees is rigorous, intensive and extremely active. So rather than just topping up the existing strategic asset allocation it has been a matter of exploring new opportunities and trying to work out where we can reduce the fees that we pay to our fund managers. That has been quite a labour intensive and time consuming exercise, and I think it will be increasingly so. In the case of HostPlus you have got trustees who at virtually every meeting are asked to look at some potential new investment, rather than simply saying, 'Let's put a bit more into international equities or Australian equities.' I do not want to take too much time from the committee, Mr Chairman, but I thought it might be a useful insight.

Senator SHERRY—On the issue of fees for fund managers, has the trend been down? Frankly, is the squeeze being put on fund managers? As the moneys under management have gone up, I hope they are not getting the same percentage. Percentages are glorious on an increasing pool of money.

Mr Elia—Yes. I think we need a separate inquiry. We were actually discussing this earlier in terms of what fund managers are really stating as their fees. It depends on the asset classes to some extent. You can get the index plus 10 and not really pay much or anything for it, if you are looking at equities—both international and Australian equities. But if you are talking about the alternative classes, where we are seeing more and more participants, more and more players in the market, the types of fees that we are seeing out there are just outrageous. In fact, we walk away. We simply say, 'No, we're not prepared to pay two and 20 to enter into a private equity or a global infrastructure fund.' More and more managers are taking more—

CHAIRMAN—What is two and 20?

Mr Elia—Two per cent and then 20 per cent above a hurdle rate, which is continuing to decline. It is 20 per cent of anything above eight. We are not desperate to get into those types of deals. We are continually lobbying managers to try to reduce their fees in that regard. Having said that, if you are actually looking for talented individuals, they can command a premium, in terms of the best stock pickers. Certainly I can name a few. So I do not think fees are necessarily declining.

Mr Collins—I endorse the suggestion made by my colleague that it is probably the subject of an independent inquiry by the committee. There is a lot of merit in drilling down into that issue, because I think that we and a number of other industry funds are at pretty much the same juncture, where we are looking at a number of perfectly profitable deals being brought to our table but with an excessive fee structure.

Senator SHERRY—It is an interesting issue. I will just raise one other issue on this investment. Have you looked at lifestyling, as was outlined earlier by Health Super?

Mr Elia—We had given it some thought a number of years ago. It was discounted for a number of reasons, largely because a majority of our members are, as we indicated earlier on, under the age of 40. The majority of them sit within the balanced option. There is a significant cost associated with introducing lifestyle types of benefits. I think from our perspective it is almost akin to providing advice. You do not really have any genuine knowledge as to what the other investments, the other assets or the financial position of that individual may be. So, to simply have an automatic system which simply moves people from one investment option to another as a consequence of change in their age does certainly, from our perspective, bring forward a number of complexities and additional costs. Having said that, for those investors, those members, who do take a proactive interest in their fund and in the investments that the fund offers, we have 20 investment options. Members can create an investment strategy that is appropriate to their needs.

Ms BURKE—What proportion of the membership actually engages in choice, though?

Mr Elia—In terms of making an active decision to—

Ms BURKE—Yes, investment choice—to actually look at the range and then make the decision to engage and say, 'I want this model for me.'

Mr Elia—It is quite interesting. At the moment, if you look at it across the total membership, it is a very small percentage. But, when you examine who is exercising this choice, it is high net worth individuals. It is people who have sizeable superannuation balances who do take a genuine interest in their superannuation arrangements. It is increasing.

Senator SHERRY—Presumably you charge different fee levels for different types of investment where the investment is more costly to operate?

Mr Elia—The investment fees are the investment fees that we pay to the underlying managers, so that will vary. Clearly, if you are looking at infrastructure and private equity, obviously there is a higher cost associated with that. But the admin fee is the same across the board.

Senator SHERRY—Just on the default option, I hate to use myself as a comparative, but couldn't it in fact be an active selection?

Mr Elia—It could, yes, and we have no way of really measuring that. I am in a balanced plan in a default option, and it is a conscious decision that I make.

Senator SHERRY—I am too. Just the time of fiddling around—and I think I am reasonably well informed—switching it, trying to work out when the market is going to drop, and then I have to say that I would have made the wrong pick a year ago, as it turned out, if I had switched it into bonds. But it just seems to me that there would be a lot of people in my category for whom it is a good, long-term rate of return and it is in effect an active selection.

Mr Elia—I agree. I think the key issue here is that we do give people the option. We do give them the opportunity to select a different investment strategy if they so wish.

CHAIRMAN—I note—and you made the point earlier—that you have three employer representative directors, three employee directors and three independent directors.

Mr Elia—That is correct.

CHAIRMAN—Has that always been the case?

Mr Elia—That change arose in 2003. Prior to that, we were probably no different to many of the other industry funds at that time. We had a 12-member board, with six employer and six member-elected representatives.

CHAIRMAN—Was that change a consequence of becoming a public offer fund and therefore having an increasing number of members outside your traditional employment base?

Mr Elia—No, actually HostPlus was probably one of the first funds to be licensed as a public offer fund. We have been a public offer fund for close to 10 years, if not in excess of that, so it was not necessarily a consequence of that. I think it was certainly well reported at that time that there was a disagreement at board level. The regulator, in discussions with the subscribers at that time, agreed to reconstitute the board with a three-three-three structure. So we have had that since about May 2003.

Ms BURKE—How are the trustees elected or appointed then—the three, three and three?

Mr Elia—In our case, the AHA, the employer organisation, elects its three directors; the LHMU, which is the employee organisation, selects its three; and jointly they agree upon the appointment of the three independent directors. So that is a joint decision.

CHAIRMAN—Given the number of industry funds that are now becoming or have become public offer funds and therefore increasingly have members who are outside the traditional industry sector that they were founded on, do you think your model of the trustee structure ought to be adopted more widely?

Mr Elia—I think this model is appropriate for HostPlus. I cannot comment about some of the other industry funds. But I think, just by mere definition, certainly in our case we are a sector-specific fund. The reason we moved to public offer some 10 years ago was largely, because it was an employer-sponsored scheme, to allow self-employed individuals within the hospitality and tourism sector and sporting sector to access the fund. I think this would probably be the same for any of the other industry funds—HESTA, Cbus and some of the others.

CHAIRMAN—What is your understanding of the sole purpose test?

Mr Elia—My understanding of the sole purpose test? I have a couple of lawyers here.

CHAIRMAN—Anyone that is before us?

Mr Elia—Our obligation is largely to maximise the retirement benefits of our members, to whom obviously we owe a duty of care.

CHAIRMAN—Your concept of deducting from members' funds the cost of advice—do you regard that as consistent with the sole purpose test?

Mr Elia—APRA have indicated that, yes, it is, and our legal advice supports that.

CHAIRMAN—Should there be any limitations on the sole purpose test?

Mr Elia—In what way?

CHAIRMAN—Where is the limit of what you can apply members' funds towards? Obviously, APRA have said you can use it for now providing advice.

Mr Elia—Yes.

CHAIRMAN—How far does that stretch, in a sense?

Mr Elia—Only insofar as it relates to superannuation related advice. I think APRA have been quite clear that you cannot use members' superannuation accounts to pay for advice that is outside the provision of superannuation related advice. I think they have been quite clear and consistent in that regard. So, if you wanted some advice, if you wanted to invest some moneys and you wanted to negative gear a particular property—that obviously sits outside the superannuation portfolio—then you cannot have the cost of that advice deducted against your super account. I think they have been very practical and reasonable in their interpretation.

CHAIRMAN—It also appears to extend to advertising.

Mr Elia—In what way?

CHAIRMAN—In the sense that members' funds are being used to pay the cost of advertising.

Mr Elia—Mr Chairman, I think it is important to understand the nature of, I suppose, the business model that industry funds have. Leaving investment costs to one side, we have a very simple fee structure—that is, we deduct, in our case, $1.50 per member per week, so it is $78 a year. We use that money to pay the costs of operating the organisation, the running costs. Whether it be salaries, rent, advertising or our administration, it is funded from that fee. So from our perspective it is very simple for members to ascertain the true cost, because that is ultimately what is deducted from members' accounts. If there are any—

CHAIRMAN—So it is a flat rate fee irrespective of their balance?

Mr Elia—It is a flat rate fee. It is $1.50 per member per week in our case, and I think other industry funds have a similar type of arrangement. They may charge $1, $1.10, $1.20, $1.80 or whatever it may be.

CHAIRMAN—Do you have a funds donation and sponsorship policy?

Mr Elia—We have a policy that says we do not make any political donations, in that regard. I have indicated that we do have a sponsorship deal with the Melbourne Storm.

CHAIRMAN—Are there any other questions?

Senator SHERRY—I have just one issue on salary continuance insurance, which I must say that I have significant concern about. I think you offer it, don't you?

Mr Elia—Yes, we do.

Senator SHERRY—It is voluntary?

Mr Elia—It is an opt-in.

Senator SHERRY—Did you get advice from the regulator, APRA, on that? They have told me that they have cleared it, but—

Mr Elia—Yes. It was probably before my time. It has been there.

Senator SHERRY—My concern has always gone to the cost of it—it is expensive—and therefore the drain on the member's savings account and just how far we go with some of this. I do not have a problem with the limited advice model. The only problem I have with the Melbourne Storm is that it is not Geelong Football Club!

Ms BURKE—This sponsorship of Melbourne Storm is obviously transparent and declared to the members; they understand—besides the fact that, if you go to a game, it is all over the place. It is obviously indicated to the members that you are funding that.

Mr Elia—Yes.

Ms BURKE—So it is not hidden in any way, shape, size or form. Other advertising?

Mr Elia—Yes, we are part of the Compare campaign. We do a whole series of advertising through various media. We have done radio. Can I just make the point that we are the hospitality, tourism, recreation and sports fund. This is our sector. These games are beamed into pubs and clubs, where our members are either working—the employers are there—or are having a good time. So there is a strong nexus and affinity between, obviously, the nature of advertising and the relationship with the sporting sector. It just so happens that they got into the grand final, and lost—

Mr Robertson—The choice—

Mr Elia—The question wasn't asked. We do monitor the expenditure quite vigorously, and we do make some assessment of the benefits we have seen as a consequence of building the brand awareness in that regard. I have highlighted one example of the benefits we have had through sheer scale—the growth of the fund, both in membership and in funds under management. We are one of the fastest-growing industry funds in Australia. Part of the reason my competitors want to stop us from marketing and branding is that it works. That is the reality. Members are

seeing the consequential benefits of that. So there is not any other cross-subsidy that comes from the investment reserve in order to fund the expenditure. It is all disclosed. It is absolutely clear to our members what the true nature of the cost is.

CHAIRMAN—How does your growth in membership compare with the growth in the number of employees in the industry?

Mr Elia—We have relatively big penetration rates in the industry, but it varies from state to state. We don't have huge penetration in Queensland, which is an area that we will be focusing on. I won't give away how much, but we have very low penetration in Queensland and we don't have as big a level of penetration in the clubs sector in New South Wales. These marketing strategies are well thought through. I have just made a comment about the clubs industry in New South Wales. I think you can draw your own conclusions.

CHAIRMAN—You said you are the fastest-growing fund. Are you keeping pace with the growth in the number of employees in the industry?

Mr Elia—Yes, we are. One of the key drivers of our growth has been the switch by, shall we say, corporate entities within our sector to HostPlus. I think the licensing regime certainly drove that, the need for employers to select a default fund—so a lot of senior executives, senior managers, who traditionally were not exposed to HostPlus. What choice did was give them an option. It gave us the capacity to offer our products in that regard.

Ms BURKE—Has the advertising picked up outside the industry?

Mr Elia—It has. There is a category of individuals and employers out there who are simply after the best super fund. They may use consultants in order to arrive at that decision, but yes, it is very minimal.

Ms BURKE—Do many of your members stay with the fund post-retirement and use you as an allocated pension? This is where financial planning becomes the big issue: what do I do with my retirement fund?

Mr Elia—Again, given the age demographic of the fund, in terms of the number of members retiring and the quantum of the dollars, it is quite small. We don't offer directly a HostPlus allocated pension, but it is becoming increasingly obvious to us that it is an important issue for us to consider and look at. We believe that we will probably be in a position to offer an allocated pension product later on in the year. The tenure of our membership is increasing. Some members are staying with the fund longer, and that is largely also driven by the professionalism within the industry. It is now a genuine career path for people to pursue a career in the hospitality, tourism and sporting sectors.

Ms BURKE—Are people who are leaving the industry staying with the fund, even though they have moved somewhere else entirely? 'I have already had that, because I had it as my casual job and it has done alright, so I will stick with it.'

Mr Elia—Yes, we are seeing a significant number of, shall we say, different employers contributing to one member, and that clearly indicates to us that choice is working, but again, it is really at the margins.

Ms BURKE—One last question: the Australian Chamber of Commerce and Industry were here before. Their submission says that the super guarantee threshold should be raised to $800 per month. I should imagine there are a lot of people within your sector with $450 per month. Do you have a comment about raising that threshold and the impact it would have on both sides of the sector—the employees and the employers?

Mr Daley—There is no doubt that at the moment it would have a substantial impact. This is an industry dominated by a number of part-time and casual employees. Certainly, there would be a significant number of workers earning $450-$800 a month. Eight hundred dollars a month reflects $200 a week. Since the advent of Work Choices, we have seen a number of industrial instruments introduced into this industry and similar industries which have forced wage earnings below the $200 level, and it might even be an incentive to further reduce them. Not only are we seeing an impact; we think we would see greater impact if that threshold were lifted.

Mr Collins—I have one issue, and I have not asked my colleagues about this but we have discussed it on previous occasions. It is something that may be well beyond your current terms of reference. It goes back to our earlier discussion about new asset classes and infrastructure in particular. It is great to see a specialist committee able to look at the sort of detail you are looking at today. One of the things you may look at in the future, and it may be with new terms of reference or renewed terms of reference, would be how you shorten the sales process and the number of times the ticket is punched with the sale of infrastructure—where government wants to dispose of existing infrastructure or create new infrastructure with the private sector, how you do that without copping excessive fees along the way.

One of the things that is engaging this fund, and I am sure the other industry funds, is whether and how we invest in infrastructure. We have looked at a couple of opportunities. We are aware of trends in Canada where some of the Ontario pension funds have been trailblazers and are looking at how they can invest more directly in infrastructure and cut out some of the fees—I think in that case paid to the Macquarie Infrastructure Group. It is something that your committee may find worth investigating in Canada—I think New Zealand is another current example where those sorts of proposals are under examination—because I think you are going to find more activity on the part of funds like ours in that area over the next new years. I think it is an issue that is only going to grow. It is not going to go away, and it would be worthy of investigation.

CHAIRMAN—Thanks. That is something we will take on board. Thank you all for your appearance before the committee and for your very good assistance with our inquiry.

Committee adjourned at 12.58 pm