

## Royal Commission Series | Superannuation

**AUTHORS |** Samantha Carroll, Director, Governance, Compliance and Regulation

Shaun McGushin, Director, Projects and Finance

David Ward, Director, Advisory

**RESEARCH |** Daniel Gallagher, Para-legal

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Commissioner Hayne has found that the superannuation sector is in need of some structural reform. Whilst the superannuation sector has not achieved the headlines of the banks, some of the recommendations will have some significant impacts. The Recommendation that stands out here for the trustee to be truly independent and what that entails.

In addition, the introduction of the BEAR in time to RSEs should lead to more accountability in the sector.

### Summary of Recommendations for Superannuation

Category	Recommendation	Comments/Impact
Trustee's obligations	<p><b>Recommendation 3.1 – No other role or office</b></p> <p>The trustee of an RSE should be prohibited from assuming any obligations other than those arising from or in the course of its performance of the duties of a trustee of a superannuation fund.</p>	<ul style="list-style-type: none"> <li>This will have a significant impact on the operation of RSEs. The trustee must be truly independent, avoid conflicts of interest and act in the best interests of the members.</li> <li>Current arrangements will require review and structural changes may be required.</li> </ul>
	<p><b>Recommendation 3.2 – No deducting advice fees from MySuper accounts</b></p> <p>Deduction of any advice fee (other than for intra-fund advice) from a MySuper account should be prohibited.</p>	<ul style="list-style-type: none"> <li>This is aimed at the general practice of fees being deducted from superannuation accounts.</li> <li>In the case of MySuper accounts, there has been found to be no justification for any such deductions.</li> <li>The change will clearly have an impact on revenue sources if fees are currently charged on MySuper Accounts. Flow on effects such as a decrease in the extent or quality of administration of these accounts should be monitored to ensure obligations continue to be met for these accounts.</li> </ul>
	<p><b>Recommendation 3.3 – Limitations on deducting advice fees from choice accounts</b></p> <p>Deduction of any advice fee (other than for intra-fund advice) from superannuation accounts other than MySuper accounts should be prohibited unless the requirements about annual renewal, prior written identification of service and provision of the client's express written authority set out in Recommendation 2.1 in connection with ongoing fee arrangements are met.</p>	<ul style="list-style-type: none"> <li>The deduction of fees generally from such superannuation accounts has been found to be of questionable or limited value.</li> <li>To address this, the proposal is that the client has to actually require the service to be required and agree to pay the fees. In addition, there should be no grandfathering arrangements (which have been clearly in the sights of Commissioner Hayne).</li> <li>The changes will trigger a need to review and amend sales processes to align with the new requirements.</li> </ul>

		<ul style="list-style-type: none"> <li>• Data and systems changes may be required to implement these changes.</li> </ul>
<p><b>‘Selling’ superannuation</b></p>	<p><b>Recommendation 3.4 – No hawking</b>  Hawking of superannuation products should be prohibited. That is, the unsolicited offer or sale of superannuation should be prohibited except to those who are not retail clients and except for offers made under an eligible employee share scheme.  The law should be amended to make clear that contact with a person during which one kind of product is offered is unsolicited unless the person attended the meeting, made or received the telephone call, or initiated the contact for the express purpose of inquiring about, discussing or entering into negotiations in relation to the offer of that kind of product.</p>	<ul style="list-style-type: none"> <li>• A consistent theme of the Royal Commission is that ‘hawking’ in any guise or for any financial product should be prohibited except in very limited circumstances.</li> <li>• The principle here is that the client is the person who should have some awareness of the product and what they may require and is the person to initiate the discussion.</li> <li>• Where these sales processes exist in the sector they will clearly need to be phased out and ultimately eliminated.</li> </ul>
<p><b>Nominating default funds</b></p>	<p><b>Recommendation 3.5 – One default account</b>  A person should have only one default account. To that end, machinery should be developed for ‘stapling’ a person to a single default account.</p> <p><b>Recommendation 3.6 – No treating of employers</b>  Section 68A of the SIS Act should be amended to prohibit trustees of a regulated superannuation fund, and associates of a trustee, doing any of the acts specified in section 68A(1)(a), (b) or (c) where the act may reasonably be understood by the recipient to have a substantial purpose of having the recipient nominate the fund as a default fund or having one or more employees of the recipient apply or agree to become members of the fund.  The provision should be a civil penalty provision enforceable by ASIC.</p>	<ul style="list-style-type: none"> <li>• The key impact from this reform will be for a person to have only one default account and for it to be transportable.</li> <li>• On the one hand, this should result in cost savings for the sector however it may also narrow the market for some funds particularly if they are industry specific.</li> <li>• This Recommendation may be a bit contentious as superannuation funds do compete to be nominated as default funds given the rewards here.</li> <li>• No doubt, if the trustee properly carries out its duties, the interests of the clients will not suffer and this should not occur. However, Commissioner Hayne has considered it necessary that the law be changed here so that it is clear that this is not lawful and for civil penalties to apply.</li> <li>• The relevant provisions of the SIS Act will likely be amended to make it clearer monetary and non-monetary benefits are prohibited to be paid by funds to entice employees to use them as the default employee fund.</li> <li>• Engagement, Gift and Corruption Policies for funds will require review to ensure they prohibit this type of conduct and engagement with employers.</li> </ul>

## Regulation

<p><b>Recommendation 3.7 – Civil penalties for breach of covenants and like obligations</b></p> <p>Breach of the trustee’s covenants set out in section 52 or obligations set out in section 29VN, or the director’s covenants set out in section 52A or obligations set out in section 29VO of the SIS Act should be enforceable by action for civil penalty.</p>	<ul style="list-style-type: none"> <li>• The trustee’s and director’s covenants in the <i>SIS Act</i> are fundamental to the proper administration of a fund. However, there is currently no consequence for a breach.</li> <li>• It is proposed that civil penalties now apply for any breach by the trustee or the directors.</li> </ul>
<p><b>Recommendation 3.8 – Adjustment of APRA and ASIC’s roles</b></p> <p>The roles of APRA and ASIC with respect to superannuation should be adjusted, as referred to in Recommendation 6.3.</p>	<ul style="list-style-type: none"> <li>• The roles of APRA and ASIC have been discussed frequently in the Final Report.</li> <li>• The Royal Commission is very much in favour of APRA and ASIC having a joint regulatory role and the overlap is seen to be worthwhile.</li> <li>• A need for a new and separate regulatory authority has been dismissed.</li> <li>• It will be important though for APRA and ASIC to work closely and cooperatively for the best results to be achieved.</li> <li>• With more targeted focus by each regulator, there is likely to be an increase in enforcement activity. However, funding and resourcing for ASIC and APRA may need to be increased for the change to be effective.</li> </ul>
<p><b>Recommendation 3.9 – Accountability regime</b></p> <p>Over time, provisions modelled on the BEAR should be extended to all RSE licensees, as referred to in Recommendation 6.8.</p>	<ul style="list-style-type: none"> <li>• The introduction of the BEAR to the banks has clearly had an influence on Commissioner Hayne.</li> <li>• The Recommendation is a sensible extension of the BEAR. However the sector may not agree with the Commission that it should not increase the regulatory burden to any significant extent. As the banks have experienced, the introduction of BEAR has taken some time and costs to implement and there will be an ongoing compliance burden.</li> </ul>

### What can you do now to prepare?

Commissioner Hayne has emphasised the important role that the superannuation sector, and by definition superannuation trustees, play. The logical extension of this is that trustees must properly discharge their obligations and protect the interests of members at all times.

Trustees and their directors, to the extent that the trustees have other functions (other than as trustees of different funds) should be looking at their ongoing role and the steps that may be necessary to implement the Recommendations and to avoid conflicts. This will in some cases require some significant changes including a review of the composition of the boards of directors, which was touched upon.

In addition the deduction of fees for financial advice from accounts will need to be implemented and the BEAR will increase the obligations of the trustee and its directions, and whilst this is not required to occur overnight, it will need to start being considered.

### **Closing Comments**

The Recommendations will lead to some significant changes in the superannuation sector. Whilst there may be some differences of opinion on some of the Recommendations or aspects of them, it seems clear that if they are properly implemented they will ultimately be of benefit to the sector as a whole and for the members. Finally, whilst Commissioner Hayne only touched on the issue briefly, the merger of some funds is clearly an ongoing issue and will not go away.

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## LEGAL SERVICES



**PETER SHAW**  
**Corporate, M&A**  
 Director - MBA BSc LLB  
[pshaw@ashstreet.com.au](mailto:pshaw@ashstreet.com.au)  
 +61 2 8651 8706



**SHAUN MCGUSHIN**  
**Projects & Finance**  
 Director - MBA BSc LLB  
[smcgushin@ashstreet.com.au](mailto:smcgushin@ashstreet.com.au)  
 +61 2 8651 8717



**SAMANTHA CARROLL**  
**Governance, Compliance & Regulation**  
 Director - LLB  
[scarroll@ashstreet.com.au](mailto:scarroll@ashstreet.com.au)  
 +61 438 323 584



**JANNA PARFENOVA**  
**Corporate, M&A**  
 Associate Director - LLM LLB  
[jparfenova@ashstreet.com.au](mailto:jparfenova@ashstreet.com.au)  
 +61 2 8651 8708



**KATRECIA MARCH**  
**Corporate, M&A & Governance**  
 Special Counsel - LLM LLB  
[kmarch@ashstreet.com.au](mailto:kmarch@ashstreet.com.au)  
 +61 2 8651 8709



**CHRIS BARTON**  
**Employment Associate**  
[cbarton@ashstreet.com.au](mailto:cbarton@ashstreet.com.au)  
 +61 2 8651 8700



**ANDREW CALVIN**  
**IT, IP & Real Property**  
 Associate Director - LLM LLB  
[acalvin@ashstreet.com.au](mailto:acalvin@ashstreet.com.au)  
 +61 2 8651 8712



**DANNY SANKEY**  
**Associate**  
[dsankey@ashstreet.com.au](mailto:dsankey@ashstreet.com.au)  
 +61 2 8651 8700

## ADVISORY SERVICES



**DAVID WARD**  
 Director - MBA BSc  
[dward@ashstreet.com.au](mailto:dward@ashstreet.com.au)  
 +61 2 8651 8704

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