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## Retail trustees, with their independent directors, were unable to protect members from fee gouging and other misconduct. They should be barred from MySuper.

By AIST CEO Eva Scheerlinck

The Government's fixation with industry super funds and its desire to break up the role of union and employer groups on industry fund boards looks like it has been finally laid to rest.

In pursuing industry funds relentlessly, the Government took its eye off the banks and the inherent conflicts of interest at the heart of their operations.

Last Friday's closing submission on the Round Five Hearings of the Royal Commission is a damning indictment on the retail super funds.

The 223-page report – prepared by counsels assisting- concluded it was open to the Commission to find that eight retail funds and related parties (covering almost the entire retail sector) may have engaged in over 150 separate instances of misconduct. These range from fee gouging, charging commissions banned under FOFA, cross-selling members into higher fee products, to the snail-pace transfer of members to MySuper products to preserve both grandfathered commissions and fees for no service.

The report noted that the Australian Securities Investments Commission expects that compensation due to members will top \$1 billion for problems relating to fees for no service alone.

By contrast, the Commission identified two instances of possible misconduct involving two not-for-profit funds, out of total of more than 50 not-for-profit funds.

Independent directors clearly have not served the members of bank-owned super funds well. But there are other, more fundamental, issues at play. As AIST has long argued, good governance isn't just about board composition and who sits around the boardroom table. The culture of the fund is crucial, and in the not-for-profit sector, superannuation has been proven to be all about members' best interests. Culture trumps independent directors any day of the week.

Good governance also requires non-conflicted fund structures. Not for profit funds were not established to deliver a dividend to shareholders. The Royal Commission has exposed that that retail funds cannot act in the best interests of their members, due to structural conflicts of interest and the influence of other members of the corporate group. Evidence examined in the Round Five hearings clearly showed that the corporate group's influence is pervasive and entrenched.

Time and time again we heard how retail trustees didn't have the power to make decisions and instead acted as rubber stamps to corporate managers squarely focused on returning dividends to shareholders. Some trustees didn't even have access to the information they needed to make

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decisions. So even with all best intentions, the retail structure impedes decisions that focus on member outcomes.

The hearings also laid bare a worrying lack of insight among many retail trustees about what it really means to have a fiduciary duty to members. Instead they talked of the need to balance the interests of members against those of the shareholders and related parties, clearly demonstrating ignorance of the law requiring them to put members first.

In the very worst instances, it was apparent that some trustees had complete disregard for members, regulators and the law.

The Royal Commission has signalled it will consider recommending a range of radical reforms to superannuation in its final report due next February. It has also posed a number of important questions – concerning both retail funds and not-to-profit funds. We will carefully examine these questions and any recommendations the Commission makes that relate to our sector.

With regard to governance, the closing submission asks whether there are structures in the retail sector that raise inherent problems for trustees being able to meet their fiduciary duties.

AIST's answer to this is a resounding, yes. Being a super trustee is a special and privileged job. Trustees are the stewards of other people's money. A trustee director cannot be focused on returning profits to members when he or she is also having to return profits to shareholders or prop up related parties. You cannot serve two masters and look after members' interests at the same.

Retail trustees, with their independent directors, were unable to protect members from fee gouging and other misconduct. The regulators have proved themselves unable to stop bad behaviour.

Therefore, AIST believes that there is no place for retail funds in MySuper, where members in a compulsory super system have the right to expect the highest level of protection.

Brand super isn't broken. Not for profit super funds – with their unflinching culture of putting members first – consistently deliver better outcomes for members.

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*AIST is the peak body for the \$1.2 trillion profit-to-member superannuation sector which includes industry, corporate and public-sector funds.*

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