

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

I write in response to the Commission's invitation for written submissions on policy issues relating to the superannuation industry raised in Round 5.

The policy issues, I raise here, involve three areas which would be of interest to the public, legislators and administrators. I will use documentary material that is in relation to a complaint made to the Superannuation Complaints Tribunal.

The RSE licensee involved, Mercer Superannuation (Australia) Pty Ltd has demonstrated a failure to understand the covenants under the SIS Act and the obligations of a trustee under trust laws.

I **DO NOT** want the FSRC to review the merits of this complaint. The SCT will do that in due course. Each of the three policy issues I will raise are clearly demonstrated in this complaint and the complaint is provided as a 'sample case'.

Issue one. Conflict of interest.

There is an obvious risk that funds may not report incidents in respect of which they (the 'Funds') do not consider dual roles give rise to a conflict of interest.

In the case of one Fund Manager, Mercer Superannuation (Australia) Pty Ltd, the material attached may be of assistance to the Commission.

Associated entities within the Mercer Group acting as adviser to the relevant employer and also acting as Trustee, Mercer Consulting, Mercer Investments (Australia) Ltd, Mercer Financial Services and Marsh and McLennan companies.

Use of 'in-house' actuaries to sign off on changes, requiring actuarial certificate of 'no prejudice' - Mercer proposes the change and provides to itself an actuary certificate prepared by a Mercer employee.

Insertion of 'absolute discretion' clauses as to nomination of 'salary' in superannuation arrangements to the detriment of existing members.

Issue two. Breach of successor fund transfer (SFT) sound practice guidelines as set out by APRA in SPG 227

Failure to maintain records of previous entitlements where adverse changes to superannuation arrangements have been made on Mercer advice, in circumstances where existing member's more generous entitlements are protected by 'no prejudice' clauses.

In undertaking an SFT, a transferring RSE licensee and a receiving RSE licensee must ensure that the transferring members' rights in respect of the benefits in the successor fund are equivalent to their rights in respect of the benefits in the transferring RSE ('equivalent rights').

Particular attention must be paid by the RSE licensee to:-

- The best interests of beneficiaries - a transferring RSE licensee and a receiving licensee must ensure SFT is in best interest of members
- 'Equivalent rights' assessment - must be agreed upon by both the transferring and receiving licensee
- Planning and carrying out an SFT- must be documented in minutes of meeting at which the decision was made
- Member communications - to keep members informed of proposed changes

- Calculating benefits – including final benefit calculation are signed off by an **external actuary** where defined benefit members are involved

Mercer's behaviour as can be seen from the Annexure has not followed the SIS Act as set out in SPG 227

Issue three. Breach of payments standards as set out by APRA in SPG 280

The duties of trustees include certain 'core' obligations, such as the duty to keep and render accounts; the duty not to allow a conflict between duty and interest; the duty not to obtain an unauthorised benefit from the trust; and the duty to adhere and carry out the terms of the trust deed.

An important function of an RSE licensee is to pay benefits out of the superannuation system to beneficiaries and between RSEs including where the benefits are rolled over or transferred.

Particular attention must be paid by the RSE licensee to:-

- Condition of release – benefits paid upon the occurrence of specific events
- Retirement definitions – include two alternative age related definitions of retirement
- Rollovers and transfers – must satisfy strict legislative requirements
- Illegal early release – the RSE licensee must reimburse member for any loss of benefit
- Rectification of errors – RSE licensee must compensate a member for any shortfall

As can be seen from the Annexure, Mercer has not followed the SIS regulations and the Corporations Act 2001 as set out in SPG 280

Mercer's behaviour as shown in the Annexure is in contradiction to the aforementioned obligations and affects all member payouts going back to 2006 and probably 2003.

The trustee's duty is to adhere to and carry out the terms of the trust. It is a matter of the upmost importance of public policy that the public has confidence in the institutions that are there to protect the public. This case highlights how Mercer has a complete disdain of the public and the Australian Parliament in ignoring the laws Parliament enacted to protect the interests of the public. Specific breaches of the legislative requirements, by Mercer, are set out in the Annexure.

Peter Dyki

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