

PALMER SUBMISSION

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

1. These submissions are filed in relation to Mr. Adam Palmer and in response to the correspondence between him and Ms. Sonja Marsic of 1 May 2018 advising him that he could make a submission about any proposed findings against him by 4 May 2018.
2. Mr Palmer has been the subject of evidence and submissions in Round 2 of the Royal Commission into misconduct in the Banking, Superannuation and Financial Services Industry (Witness Statement of Ms Britt, XXN of Ms Britt 23.4.18. TS p.1622 line 14 to p1650 l.14; XXN of Mr T. McMaster 26.4.18. TS p.1868 line 3 to p.1877 line 36; Submissions of Counsel, 27.4.18. TS p.1971 line 26 to p.1973 line 22.)
3. In particular on 27 April 2018 Counsel assisting the Commission submitted the following by way of proposed for possible findings against Mr Palmer (TS p.1973 ll. 4- 22):

On the evidence, it's open to the Commissioner to find that Mr Palmer's conduct, in advising clients to open self-managed superannuation funds and purchase investment properties with the assistance of a business in which he had a direct interest, might also amount to misconduct. Again, AMP conceded this in its submissions and evidence. In particular, it's open to the Commissioner to find that Mr Palmer may have breached his statutory obligation under section 961B of the Corporations Act to act in the best interests of the clients, his obligation under section 961G to only provide advice to clients if it would be reasonable to conclude that the advice was appropriate to the client, his obligation under section 961J by failing to give priority to the clients' interests when giving advice in circumstances where, by reason of his 60 per cent interest in the property business, there was a conflict between his interests and the interests of the clients.

He may have breached his obligation under section 1041H(1) of the Corporations Act not to engage in conduct in relation to a financial product or financial service that is misleading or deceptive, or likely to mislead or deceive, and he may have breached his obligation under section 12DA of the ASIC Act not to engage in conduct in relation to financial services that is misleading or deceptive, or likely to mislead or deceive.

4. It is submitted that:
 - a) Adam Palmer should not be the subject of any particular finding of misconduct in his provision of financial advice because the matters in question have already been investigated and dealt with by investigators at ASIC in 2017;
 - b) Further and alternatively to subparagraph a), there is no question relating to potential criminal or other legal proceedings against Mr. Palmer which should the subject of any referral to any agency and, accordingly, no such referral should be made;

- c) The submissions to the Commissioner at the close of Round 2 should complete the record by acknowledgment that ASIC have investigated the conduct of Mr. Palmer while he was acting as an authorised representative of Genesys and AMP which included the conduct the subject of the evidence before the Commission. On 7 December 2017, other than requiring remediation in respect of four client files, which has been undertaken, ASIC decided to take no further action.
5. While it is acknowledged that the submissions as to possible action against Mr. Palmer are based on and confined to the evidence before the Commission and that, further, Mr Palmer had but did not avail himself of the opportunity to make a statement or to seek to appear before the Commission to put further evidence, nonetheless it appears significant evidence before the Commission concerning Mr Palmer's case has been overlooked or given insufficient weight in the submissions quoted above.
6. In particular the proposed findings seem to overlook that Mr Palmer's conduct was reported to ASIC by AMP (eg: XXN Britt p.1639 ll 13 and 23-25) and that ASIC undertook an investigation (XXN Britt p.1642 ll11-13).
7. Indeed Counsel Assisting the Commission put it to Ms Britt that :
- And are you aware that after Mr Palmer moved to Dover, ASIC conducted a review of his files at Dover and identified multiple potential breaches of the Corporations Act in connection with his files? (XXN Britt p.1642 ll11-13).*
8. It is apparent from this that the Commission had access to and had considered ASIC's materials and decision concerning Mr Palmer. However – while it was adverted to in the course of evidence it was not tendered. Neither was it put in evidence or acknowledged in submissions that, after investigation of Mr Palmer's conduct at both AMP and Dover, in 2017 ASIC advised Mr palmer in writing that is required him to undertake remedial steps in relation to 4 files and otherwise had decided to take no further action. It is assumed the documents from ASIC to which Counsel assisting the Commission had access disclosed this decision and, indeed, included the said letter of 7 December 2017.
9. It is respectfully submitted that it is a matter of serious prejudice to Mr. Palmer in the context of the submissions put against him that while his conduct has been characterised as dishonest by Counsel assisting the Commission and it has been stated that the ASIC investigation identified breaches of Corporations Law what has not been put :
- a. is a full statement of the ASIC findings;
- b. is that the particular determination of ASIC was *not* to proceed with any sanction.
10. Further we are not aware of any criticism of the ASIC investigation into Mr Palmer in submissions to the Commission.
11. It is further submitted that the repeated characterisation of Mr Palmer's conduct as dishonest in the course of evidence, by way of repeating an internal AMP characterisation of his conduct (prior to it being investigated) which Ms Britt was patently reluctant to adopt, was immoderate and unfair to Mr Palmer and has exposed him to adverse opinion and press coverage. Indeed

Ms Britt noted that in fact, that in her investigation at AMP she had not seen any evidence of actual dishonesty in Mr Palmer's conduct. (TS p.1639 ll1-3). Further the ASIC findings upon investigation made no finding of dishonesty and, indeed, did not make any express finding of contravention of any particular law, notwithstanding the submissions quoted above.

12. Moreover it is noted that, following upon the evidence given by Ms Britt and the observations of Counsel Assisting on 23 April 2018, Mr Palmer was the subject of negative press coverage concerning his conduct – which had been already investigated and remediated – with no mention of those details being reported and without the benefit of a balanced depiction of the ASIC investigation outcome.
13. In the premises, it is submitted that:
 - a. in the absence of consideration of the complete known evidence concerning the conduct at issue
 - b. in the absence of some further evidence against him concerning the conduct at issue,
 - c. in the absence of criticism of the ASIC investigation and its outcome into the conduct at issue,
 - d. No finding of dishonesty or any particular breach of law was made by ASIC;
 - e. No particular finding of failure, in terms, of Mr Palmer in his "best interests duty" and none that could not be adequately addressed by remediation;
 - f. where remediation has been directed by ASIC and fulfilled by Mr. Palmer;
 - g. Mr Palmer's affected client's must, perforce of the ASIC investigation, be aware of the issues concerning compliance with financial advice regulation AND have civil remedies available to them;

it is unjustified and unfair to recommend or propose that Mr. Palmer should be investigated again for the same conduct by the same body or any other agency within 12 months of the previous investigation.

14. Further it is submitted that the final ASIC findings from the investigation of Mr Palmer should be tendered and form part of the Commission's record.
15. Accordingly it is respectfully submitted that no adverse finding should be made against Mr Palmer nor should any referral for further action or investigation against him made.

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Counsel for Mr. Adam Palmer

4 May 2018