

Regulation 5
Schedule 1

No. SUM-108

COMMONWEALTH OF AUSTRALIA
Royal Commissions Act 1902
COMMISSION OF INQUIRY INTO
MISCONDUCT IN THE BANKING, SUPERANNUATION AND
FINANCIAL SERVICES INDUSTRY

SUMMONS TO APPEAR BEFORE THE COMMISSION

To: Thy Do

18 Katherine Terrace,
KATHERINE, NT, 0850

In pursuance of subsection 2(1) of the *Royal Commissions Act 1902*, I, the Honourable Kenneth Madison Hayne AC QC, Commissioner of the Commission established under Letters Patent dated 14 December 2017 to make inquiry into and report upon the above-mentioned matters, summon you:

- (a) to appear before the Commission at the hearing to be held at the Supreme Court Building, State Square, Darwin on 2 July 2018 at 10 am to give evidence in relation to the matters into which the Commission is inquiring and to produce this summons and the documents described in the Schedule; and
- (b) to attend from day to day unless excused or released from further attendance.

SCHEDULE

1. The final signed witness statement of Thy Do and the exhibits to that statement.

Dated this 2 day of July 2018



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The Honourable Kenneth Madison Hayne AC QC
Commissioner of the Royal Commission

ANNEXURE A**DEFINITIONS TO SUMMONS**

For the purposes of this Notice:

1. **'document'** includes any book, register or other record of information, however compiled, recorded or stored and includes:
 - a. anything on which there is writing; and
 - b. anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
 - c. anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
 - d. a map, plan, drawing or photograph.
2. **'financial services entity'** means:
 - a. an ADI (authorised deposit-taking institution) within the meaning of the *Banking Act 1959*; or
 - b. an entity that carries on a business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, including:
 - i a general insurer (within the meaning of the *Insurance Act 1973*); and
 - ii an entity that carries on life insurance business (within the meaning of the *Life Insurance Act 1995*); or
 - c. a person or entity required by s 911A of the *Corporations Act 2001* to hold an Australian financial services licence, or who is exempt from the requirement to hold such a licence by virtue of being an authorised representative; or
 - d. a person or entity that:
 - i is an RSE licensee of a registrable superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
 - ii has any connection (other than an incidental connection) to such an RSE licensee; or
 - e. a person or entity that acts or holds itself out as acting as an intermediary between borrowers and lenders;

but does not include an entity that is a Commonwealth company or Commonwealth entity (both within the meaning of the *Public Governance, Performance and Accountability Act 2013*).



3. **'misconduct'** includes conduct that:
- a. constitutes an offence against a Commonwealth, State or Territory law, as in force at the time of the alleged misconduct; or
 - b. is misleading, deceptive, or both; or
 - c. is a breach of trust, breach of duty or unconscionable conduct; or
 - d. breaches a professional standard or a recognised and widely adopted benchmark for conduct.



ANNEXURE B**TERMS OF REFERENCE**

The Letters Patent dated 14 December 2017 requires and authorises (among others) the Royal Commission to inquire into the following matters:

- (a) whether any conduct by financial services entities (including by directors, officers or employees of, or by anyone acting on behalf of, those entities) might have amounted to misconduct, and, if so, whether the question of criminal or other legal proceedings should be referred to the relevant Commonwealth, State or Territory agency;
- (b) whether any conduct, practices, behaviour or business activities by financial services entities fall below community standards and expectations;
- (c) whether the use by financial services entities of superannuation members' retirement savings, for any purpose, does not meet community standards and expectations or is otherwise not in the best interests of those members;
- (d) whether any findings in respect of the matters mentioned in paragraphs (a), (b) and (c):
 - (i) are attributable to the particular culture and governance practices of a financial services entity or broader cultural or governance practices in the relevant industry or relevant subsector; or
 - (ii) result from other practices, including risk management, recruitment and remuneration practices, of a financial services entity, or in the relevant industry or relevant subsector;
- (e) the effectiveness of mechanisms for redress for consumers of financial services who suffer detriment as a result of misconduct by financial services entities;
- (f) the adequacy of:
 - (i) existing laws and policies of the Commonwealth (taking into account law reforms announced by the Commonwealth Government) relating to the provision of banking, superannuation and financial services; and
 - (ii) the internal systems of financial services entities; and
 - (iii) forms of industry self-regulation, including industry codes of conduct;

to identify, regulate and address misconduct in the relevant industry, to meet community standards and expectations and to provide appropriate redress to consumers;
- (g) the effectiveness and ability of regulators of financial services entities to identify and address misconduct by those entities;
- (h) whether any further changes to any of the following are necessary to minimise the likelihood of misconduct by financial services entities in future (taking into account any law reforms announced by the Commonwealth Government):
 - (i) the legal framework;
 - (ii) practices within financial services entities;
 - (iii) the financial regulators;
- (i) any matter that has occurred or is occurring overseas, to the extent the matter is relevant to a matter mentioned in paragraphs (a) to (h);
- (j) any matter reasonably incidental to a matter mentioned in paragraphs (a) to (i).



The Letters Patent provides the following definitions:

financial services entity means:

- (a) an ADI (authorised deposit-taking institution) within the meaning of the *Banking Act 1959*; or
- (b) an entity that carries on a business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, including:
 - (i) a general insurer (within the meaning of the *Insurance Act 1973*); and
 - (ii) an entity that carries on life insurance business (within the meaning of the *Life Insurance Act 1995*); or
- (c) a person or entity required by s 911A of the *Corporations Act 2001* to hold an Australian financial services licence, or who is exempt from the requirement to hold such a licence by virtue of being an authorised representative; or
- (d) a person or entity that:
 - (i) is an RSE licensee of a registrable superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
 - (ii) has any connection (other than an incidental connection) to such an RSE licensee; or
- (e) a person or entity that acts or holds itself out as acting as an intermediary between borrowers and lenders;

but does not include an entity that is a Commonwealth company or Commonwealth entity (both within the meaning of the *Public Governance, Performance and Accountability Act 2013*).

macro-prudential policy and regulation means policy and regulation, including as to the structure, role and purpose of financial regulators, that is concerned with containing systemic risk, which can have widespread implications for the financial system as a whole.

misconduct includes conduct that:

- (a) constitutes an offence against a Commonwealth, State or Territory law, as in force at the time of the alleged misconduct; or
- (b) is misleading, deceptive, or both; or
- (c) is a breach of trust, breach of duty or unconscionable conduct; or
- (d) breaches a professional standard or a recognised and widely adopted benchmark for conduct.



ANNEXURE C

**STATEMENT OF RIGHTS AND OBLIGATIONS
OF A PERSON SERVED WITH A SUMMONS UNDER
SECTION 2(1) OF THE *ROYAL COMMISSIONS ACT* 1902 (CTH)**

Rights

- 1 Pursuant to subsections 6A(3) and (4) of the *Royal Commissions Act* 1902 (Cth) ("the Act"), a person is relieved from answering a question if the answer might tend to incriminate the person in relation to an offence or make them liable to a penalty, and the person has been charged with the offence, or proceedings in relation to the penalty have been commenced, and the charge, or penalty proceedings, have not been finally dealt with by a court or otherwise disposed of.
- 2 Pursuant to subsection 6D(1) of the Act, a person cannot be compelled to disclose to the Commission any secret process of manufacture.
- 3 Pursuant to subsection 6D(2) of the Act, a person can request that evidence relating to a particular subject matter be taken in private on the ground that the evidence relates to the profits or financial position of any person, and that the taking of the evidence in public would be unfairly prejudicial to the interests of that person. If a person makes this request, the Commissioner may, if he thinks proper, take that evidence in private and no person who is not expressly authorised by the Commission to be present shall be present during the taking of that evidence.
- 4 Pursuant to subsection 6D(3) of the Act, a person can apply to have the Commissioner direct that any evidence given before him, or the contents of any document or a description of any thing produced before, or delivered to, the Commission, or any information that might enable a person who has given evidence before the Commission to be identified, shall not be published, or shall not be published except in such manner, and to such persons, as the Commission specifies.

The penalty for the offence of failing to comply with a direction made under subsection 6D(3) is, on summary conviction, a fine not exceeding \$2000 or imprisonment not exceeding 12 months.

- 5 Pursuant to subsection 6DD(1) of the Act, any statement or disclosure made by a natural person in the course of giving evidence before a Commission, or the production of a document or other thing by the person pursuant to summons under section 2, is not admissible in evidence against that person in any civil or criminal proceedings in any court of the Commonwealth or a State or Territory.
- 6 Pursuant to subsection 6F(2) of the Act, a person has the ability to request the Commission return documents which have been produced where the retention of the document ceases to be reasonably necessary for the purposes of the inquiry and where the person appears to the Commission to be entitled to the document (unless the document has been furnished by the Commission to a person or body specified in subsections 6P(1), (2), (2A) or (2B) of the Act).



- 7 Pursuant to subsection 6G(1) of the Act, a witness appearing before a Commission is to be paid a reasonable sum for the expenses of their attendance in accordance with the prescribed scale. Pursuant to subsection 8(1) of the Act, a witness summoned under the Act may be paid an allowance for their travelling expenses and maintenance while absent from their usual place of abode.
- 8 Pursuant to subsection 7(2) of the Act, a witness summoned to attend or appearing the Commission will have the same protection as a witness in any case tried in the High Court.

Obligations

- 1 Pursuant to subsection 2(2) of the Act, a person appearing at a hearing may be required to produce a document or other thing.
- 2 Pursuant to subsection 3(1) of the Act, a person served, as prescribed, with a summons to appear as a witness commits an offence if they fail to attend as required by the summons or fail to attend from day to day unless excused, or released from further attendance, by a member of the Commission.

This is an offence of strict liability and the penalty for this offence is a fine of \$1000 or imprisonment for 6 months. Subsection 3(1) of the Act does not apply if a person has a reasonable excuse.¹

- 3 Pursuant to subsection 3(2) of the Act, a person appearing as a witness at a hearing before a Commission commits an offence if they fail to produce a document or other thing that they were required to produce by a summons under the Act served on them as prescribed or that the person was required to produce by the presiding member of the Commission.

This is an offence of strict liability and the penalty for this offence is a fine of \$1000 or imprisonment for 6 months.

- 4 Pursuant to subsection 6(1) of the Act, a person commits an offence if they appear as a witness before the Commission and refuse to be sworn or to make an affirmation or to answer any question relevant to the inquiry put to them by the Commissioner.

This is an offence of strict liability and the penalty for this offence is a fine not exceeding \$1000 or imprisonment for a period not exceeding 6 months.

- 5 Pursuant to subsection 6AA(1) of the Act, it is not a reasonable excuse for the purposes of subsection 3(5) for a person to refuse or fail to produce a document that the document is subject to legal professional privilege unless:²
- (a) a court has found the document (or the relevant part of the document) to be subject to legal professional privilege; or
 - (b) a claim that the document (or the relevant part of the document) is subject to legal professional privilege has been made to the Commissioner with the time required.

¹ The term 'reasonable excuse' is defined in subsection 1B(1) of the Act.

² See Practice Guideline 2 for the requirements for making a claim of legal professional privilege.

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- 6 Pursuant to subsection 6AB(1) of the Act, a person commits an offence if the person had refused or failed to produce a document as required under subsection 2(1), the Commissioner has decided to reject a claim of legal professional privilege under section 6AA³ and the person refuses or fails to produce the document as the Commissioner requires after that decision under subsection 2(1).

This is an offence of strict liability and the penalty for this offence is a fine of \$1000 or imprisonment for 6 months.

- 7 Pursuant to subsections 6A(1) and (2) of the Act, it is not a reasonable excuse for the purpose of subsection 3(2B) or section 6AB of the Act for a person to refuse or fail to produce a document or other thing, and a natural person is not excused from answering a question that the person is required to answer by a member of a Commission, on the ground that such production, or answering the question, might tend to:

- (a) incriminate the person; or
- (b) make the person liable to a penalty.

- 8 Pursuant to subsections 6A(3) and (4) of the Act, subsections 6A(1) and (2) of the Act do not apply to the refusal or failure to produce a document or other thing, or the answer to a question, if:

- (a) the production or answer might tend to incriminate the person in relation to an offence or make the person liable to a penalty; and
- (b) the person has been charged with that offence, or proceedings in respect of the penalty have commenced; and
- (c) the charge, or penalty proceedings, have not been finally dealt with by a court or otherwise disposed of.

- 9 Pursuant to subsection 6B(1) of the Act, if a person served with a summons to attend a Royal Commission as a witness fails to attend the Commission in answer to the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the person's apprehension.

- 10 Pursuant to subsection 6B(2) of the Act, the warrant for apprehension of a person issued under subsection 6B(1) of the Act will authorise the apprehension of the witness and the witness being brought before the Commission, and the witness's detention in custody for that purpose until they are released by order of the Commissioner.

- 11 Pursuant to subsection 6B(4) of the Act, the apprehension of any witness under section 6B of the Act will not relieve the witness from any liability incurred by the witness by reason of non-compliance with the summons.

³ See Practice Guideline 2 for the requirements for making a claim of legal professional privilege.

- 12 Pursuant to subsection 6H(1) of the Act, a person commits an offence if, at a hearing before a Commission, they intentionally give evidence that the person knows to be false or misleading with respect to any matter, being a matter that is material to the inquiry being made by the Commission.

This is an indictable offence and, subject to section 6H of the Act, is punishable on conviction by imprisonment for a period not exceeding 5 years or by a fine not exceeding \$20,000.

- 13 Pursuant to subsection 6K(1) of the Act, a person commits an offence if:
- (a) the person acts or omits to act; and
 - (b) this results in a document or other thing being concealed, mutilated, destroyed, or being made unidentifiable, or, in the case of documents, rendered illegible or indecipherable; and
 - (c) the person knows, or is reckless as to whether, the document or thing is one that is or may be required in evidence before a Commission; or the person has been, or is likely to be, required to produce the document or thing pursuant to a summons, requirement or notice under section 2 of the Act.

This is an indictable offence, which is punishable on conviction on indictment by imprisonment for a period not exceeding 2 years or by a fine not exceeding \$10,000, or, on summary conviction, by a fine not exceeding \$2000 or imprisonment for a period not exceeding 12 months.

- 14 Pursuant to subsection 6O(1) of the Act, any person who intentionally insults or disturbs a Royal Commission, or interrupts the proceedings of a Royal Commission, or uses any insulting language towards a Royal Commission, or by writing or speech uses words false and defamatory of a Royal Commission, or is in any manner guilty of any intentional contempt of a Royal Commission, commits an offence.

The penalty for this offence is \$200 or imprisonment for 3 months.

- 15 Pursuant to subsection 7(2) of the Act, a witness summons to attend or appearing before the Commission will, in addition to the penalties provided by the Act, be subject to the same liabilities in any civil or criminal proceeding, as a witness in any case tried in the High Court.