

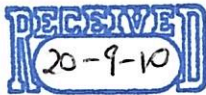
cc Dr John Laker

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CONTAINED



15 September 2010



12 Highland Way

Highton, 3216

Your Ref: APRA08/004080

Attn: Thea Rosenbaum

**APRA**

GPO Box 9836

Melbourne Vic 3001

RECEIVED  
APRA - SECRETARY  
29 SEP 2010

Dear Ms Rosenbaum

**RE: So what was my Complaint to the SCT?**

Further to my letter of 14 September 2010, I wish to raise some other issues in relation to your letter of 7 September 2010.

You state: "however your initial allegations against the Trustee appear to be that it incorrectly applied the provisions of the trust deed in calculating your final benefit".

This confirms that you do not even know what was the substance of my complaint to the SCT in the first instance. Since the SCT made no ruling on the **MERITS** of my complaint, there is **no document** in existence from the SCT that outlines my complaint to the SCT and the reasons why the SCT made a ruling on the **MERITS** of my complaint.

So **APRA** does not even know what my complaint actually was that I made to the Tribunal in the first place!

The **Commonwealth Ombudsman** has confirmed that the Tribunal made no ruling on the merits of my initial complaint.

I have given a copy of the letter from the Commonwealth Ombudsman to **APRA** on a number of occasions, yet **APRA** continues to ignore the Ombudsman's ruling.

**APRA** still claims that the Tribunal has already made a ruling (on an unspecified complaint) and so **APRA** will not investigate any further matters I might raise concerning the security of Australia's superannuation system.

Now the only ruling that the Tribunal has made, **were on its own powers**, not on the merits of my complaint.

Now I can tell you what was not in my original complaint to the Tribunal.

I did not raise the matter of the breach of **Regulation 16:13** and **Section 58** of the **Superannuation Industry (Supervision) Act 1993**.

It is not the role of the Tribunal to deal with breaches of the **SIS Act**. Under **Section 64** of the Tribunal's governing **Superannuation (Resolution of Complaints) Act**, the Tribunal must report breaches of the **SIS Act** to **APRA** and/or **ASIC**.

Since I did not raise the matter of breaches of **Regulation 16:13** and **Section 58** of the **Superannuation Industry (Supervision) Act 1993 (SIS Act)**, with the Tribunal in my original complaint (I only gained knowledge of the **SIS Act** some months later), the Tribunal did not notify **APRA** of these breaches.

You are trying to avoid the failure of **APRA** to properly investigate serious breaches of the **SIS Act** by claiming "*disputes between the trustee and a beneficiary of a fund concerning the interpretation of a trust deed are not whole of fund matters concerning APRA*".

This is not a personal dispute between one beneficiary and a Trustee as you are trying to make out.

This is a "**whole of fund matter**" – that is why the **Superannuation Complaints Tribunal** ruled that it was beyond its powers to deal with in the first instance. The **Commonwealth Ombudsman** has supported this ruling.

All members of the Defined Benefit fund in recent years have been defrauded by a combination of the following breaches of the **SIS Act**.

- Section 52 – failure to disclose trust documents
- Section 58 – taking direction from the employer
- Regulation 16:13 – reducing benefits without the written approval of members
- Sections 303, 306 and 307 – the production of false and misleading accounting records for the purpose of deceiving members and Industry Regulators.

This is not just a difference in opinion over the meaning of words. This is a **major fraud** involving the deliberate production of false and misleading accounting records, alternation to the Trust Deed and Rules to facilitate the fraud, concealing documents from members and beneficiaries along with Industry Regulators and the failure to obtain members written approval to reduce their benefits.

But **APRA** has turned a "*blind eye*" to these breaches of the **SIS Act**, even when I have provided documentary evidence of these breaches.

Instead you have tried to mislead me, by claiming these "*matters*" are not "*matters*" for **APRA** to address. These are "*matters*" for the SCT. I am no fool, let me assure you.

It is **APRA's** role to enforce the **SIS Act**. It is not the role of the SCT. This has been confirmed by the previous responsible Minister the Hon Chris Bowen MP.

I have made submissions to **APRA** on all these breaches of the **SIS Act** along with supporting evidence, yet you maintain I have made an unspecified complaint on some "*matter*" to the Tribunal and that the Tribunal has made a ruling on this unspecified "*matter*" – so now there is nothing more **APRA** can do?

OK then so what is this "matter", where you claim the SCT has made its decision "on the matter".

Was this "matter" a breach of **Section 52** of the SIS Act, or **Section 58**, or **Regulation 16:13** or criminal offenses under Sections **303, 306, 307** of the SIS Act.

It is not my role or the role of my legal advisors to enforce the **SIS Act** – it is the role of **APRA** (along with ASIC). So why has **APRA** avoided this enforcement obligation to protect the integrity of Australia's Superannuation System. This is a matter of **public interest**.

As I pointed out in my letter of 14 September 2010, **APRA** did take action in an almost identical case involving a breach of **Regulation 16:13** in the AXA and AXA Trustee case. Yet now you are claiming these are not "**whole of fund matters**". Where is your credibility?

Do you think people would have confidence in Australia's superannuation system if they knew how easy it is to be defrauded out of a large proportion of their superannuation entitlements and the best industry Regulators can do is point the finger at other Regulator and say "**it's not our responsibility, it's theirs**".

Perhaps it's now time to alert people to these issues.

Yours Sincerely

Phillip Sweeney

Dr John Laker

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