



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001 (Cth)

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission by:

TOWER SUPERANNUATION PTY LTD
(A.C.N 005 079 970)

1. BACKGROUND

The Parties

- 1.1. Tower Superannuation Pty Limited ("**Tower Super**") is a wholly owned subsidiary of Tower Australia Limited ("**Tower**").
- 1.2. Tower Super provides and has provided superannuation and retirement income stream products to the general public.
- 1.3. Tower Super was appointed as approved trustee of the Superb Master Trust ("**Master Trust**") on 1 July 1994.
- 1.4. Since 1994, Tower Super issued interests in the Master Trust to the general public.
- 1.5. The Master Trust is a superannuation fund comprising four divisions as follows:
 - (a) Commercial;
 - (b) Employer;
 - (c) Personal; and
 - (d) Allocated Pensions.
- 1.6. Tower Super as the approved trustee of the Master Trust offered a range of different investment options, through Tower's investment managers and external investment managers, to its members. Members had the option to invest in a range of unitised funds and other securities through the Master Trust.
- 1.7. The Master Trust was administered by Tower Risk and Investment Management Limited ("**TRIM**") on a system called SSS.

The Master Trust Issue

- 1.8. On 1 September 2003, Tower Super resolved to:
- (a) close the Master Trust to new interests from 30 September 2003;
 - (b) terminate the trust with effect from 31 March 2004; and
 - (c) to transfer eligible members to:
 - (i) Tower Master Fund ("**Master Fund**") on a successor fund basis;
 - (ii) a complying superannuation fund nominated by the member; or
 - (iii) Tower Super's eligible rollover fund, Australian Eligible Rollover Fund.
- 1.9. On completion of the transfers referred to in clause 1.8(c), Tower Super received a number of enquiries from members in relation to account balances at exit. Investigations by Tower Super revealed a number of administrative errors in the calculation of members' account balances.
- 1.10. Tower Super commissioned TRIM to investigate the administrative errors referred to in clause 1.9 and to recommend an appropriate solution to rectify the errors.
- 1.11. Investigations by TRIM identified that since 1994, the following administrative errors have occurred:
- (a) distributions from some investment options have not been correctly allocated to members accounts; and
 - (b) tax credits and other tax concessions received in respect of some unitised investment managers and direct shares have not been correctly allocated to members accounts.
- ("Administrative Errors")**
- 1.12. The Administrative Errors referred to in 1.11 in turn created the following consequential errors:
- (a) capital gain tax payable upon redemption of units in some unitised investment managers and direct shares have not been correctly applied to members accounts; and
 - (b) incorrect member fees and asset management fees were charged to members' accounts.
- ("Consequential Errors")**
- 1.13. The result of the Administrative Errors and the Consequential Errors was that:
- (a) a member's account balance may not be correct in that the account balance may be overvalued or undervalued;
 - (b) the earnings distributed to account balances may not be correct; and
 - (c) the amount paid to members on redemption or withdrawal from the Master Trust may not be correct.

- 1.14. The result of the matters referred to in clause 1.13 was that members were provided with advices and annual statements in relation to their investments that may not be correct.
- 1.15. All members who held an investment in an impacted investment option during the time that Tower Super was the approved trustee of the Master Trust are potentially impacted by the Administrative and Consequential Errors.
- 1.16. Tower Super asserts that the Administrative and Consequential Errors were caused by inadvertent mistakes by TRIM.
- 1.17. Tower Super asserts that the Administrative Errors are limited to the Master Trust and do not affect other financial products which are or have been issued by Tower Super or its related corporate bodies.
- 1.18. The matters described in clauses 1.8 to 1.17 above are referred to in this Enforceable Undertaking as the "**Master Trust Issue**".

ASIC's role

- 1.19. The Australian Securities and Investments Commission ("**ASIC**") is the consumer protection regulator of the financial services industry and accordingly is responsible for the monitoring and promoting of market integrity in the Australian financial system.
- 1.20. ASIC is concerned that:
 - (a) members in the Master Trust had been receiving advices and annual statements which contained incorrect information regarding their account balances; and
 - (b) members who had exited from the Master Trust had received redemption or withdrawal amounts that were incorrect;and accordingly members may have been misled or deceived.
- 1.21. For the reasons referred to in clause 1.20, ASIC is concerned that Tower Super may have breached provisions of the Australian and Securities and Investments Commission Act 2001 ("**ASIC Act**") including section 12DA of the ASIC Act.
- 1.22. ASIC acknowledges that Tower reported the Master Trust Issue to ASIC.
- 1.23. ASIC also acknowledges that Tower Super has co-operated fully with ASIC in dealing with the Master Trust Issue.
- 1.24. Tower Super has offered, without admission of any liability, and ASIC has accepted this Enforceable Undertaking in relation to the ASIC's concerns.

2. UNDERTAKINGS

Pursuant to section 93AA of the ASIC Act, Tower Super offers the following undertakings to ASIC:

Provide ASIC with signed Repayment Methodology

- 2.1. Tower Super will by 10 March 2005 or by such later day as ASIC shall agree, provide ASIC with a report signed by at least two directors of the Board of Tower Super which will describe the Master Trust Issue and the repayment methodology, including information on the method of identifying and providing appropriate repayment to members in the Master Trust ("**Repayment Methodology**").

Review of Repayment Methodology

- 2.2. Tower Super will engage the services of an external compliance consultant suitable to ASIC to provide Tower Super with a report or reports:
- (a) providing an opinion on the reasonableness of the additional benefit entitlement calculation component of the Repayment Methodology, in accordance with the terms of engagement between Tower Super and the external compliance consultant previously agreed by ASIC (consent not to be unreasonably withheld); and
 - (b) makes any recommendations if this is not the case.

("Repayment Methodology Report")

Nothing in this clause prevents Tower Super from liaising with ASIC and/or the external compliance consultant on the Repayment Methodology Report and on any qualifications contained therein, and the parties acknowledge that it may necessary or desirable to do so.

For the purpose of this clause, Tower Super will provide ASIC with a copy of the signed terms of engagement between Tower Super and the external compliance consultant.

- 2.3 If the external compliance consultant is not satisfied as to the reasonableness of the Repayment Methodology, Tower Super will prepare revisions to the Repayment Methodology Report and will repeat the process set out in clauses 2.1 and 2.2 in respect of those revisions.
- 2.4 Tower Super will provide ASIC with a copy of the final Repayment Methodology Report by no later than 7 days of receipt by Tower Super or 30 April 2005, whichever is the earlier.

Implement Repayment Methodology

- 2.5. Tower Super will by 30 April 2005 do all acts and things reasonably necessary to implement the Repayment Methodology, including providing Repayments to impacted members in accordance with its terms. If required, Tower Super may request ASIC's consent to an extension of time to implement the Repayment Methodology (such consent not to be unreasonably withheld).

- 2.6. In the case of any member to whom such Repayments should be provided but for whom Tower Super does not possess a current address or means to contact the member, Tower Super will be taken to have complied with clause 2.5 if it uses its best endeavours in line with industry standards to locate that member and to provide Repayment to that member.
- 2.7. If notwithstanding clause 2.6, Tower Super is unable to locate that member, Tower Super will provide the Repayments in accordance with the relevant legislative provisions for lost members.

Review of Implementation of Repayment Methodology

- 2.8. Tower Super will, within 21 days of the implementation of the Repayment Methodology, engage the services of an external compliance consultant suitable to ASIC to review the implementation of the Repayment Methodology ("**RM Implementation Report**"), in accordance with the terms of engagement between Tower Super and the external compliance consultant previously agreed by ASIC (consent not to be unreasonably withheld), and to provide a report to Tower Super as to:
- (a) Whether, based on a review of the testing program employed by the model implementation team, the compliance consultant has identified any matters in its review that would lead it to conclude that the model used to calculate the additional benefit entitlements due to members ("**Repayments**") is not consistent with the Repayment Methodology; and
- (b) any recommendations concerning such matters identified.

The parties acknowledge that it may be necessary or desirable for Tower Super to discuss the findings and recommendations contained in the RM Implementation Report with either ASIC or the external compliance consultant or both and that, therefore, nothing in this Enforceable Undertaking is intended to prevent those discussions occurring.

For the purpose of this clause, Tower Super will provide ASIC with a copy of the signed terms of engagement between Tower Super and the external compliance consultant.

- 2.9. Tower Super will provide ASIC with a copy of the RM Implementation Report within 7 days of receipt of the report referred to in 2.8 by Tower Super.
- 2.10. Tower Super will:
- (a) promptly implement the consultant's recommendations, if any, as provided for in clause 2.8; and
- (b) within such period from the date of receipt by ASIC of the RM Implementation Report as is determined in consultation with ASIC, having regard to the scope of the consultant's recommendations and the practical difficulties of their implementation, provide ASIC with a report signed by a director of Tower Super confirming that Tower Super has fully complied with those recommendations. If required, Tower Super may request ASIC's consent to an extension of time (such consent not to be unreasonably withheld).

Waiver of rights

- 2.11. Tower Super will not sue any impacted members in respect of an overpayment or seek the return from any impacted members of any overpayment made as a result of the Master Trust Issue.

Funding of Repayments

- 2.12. Tower Super will fund the Repayments and to the extent that Tower Super does not have sufficient money to fund the Repayments, TRIM has agreed to fund the Repayments from its shareholder funds.
- 2.13. Tower Super will fund the cost of implementing the Repayment Methodology referred to in clauses 2.5 to 2.7.

Notice to members

- 2.14. Tower Super will, by 31 March 2005 (or any extension of that period agreed by ASIC) but subject to clauses 2.6 and 2.7, notify impacted members to whom Repayments will be provided, in the form and manner previously agreed by ASIC of the Master Trust Issue.

Further Information

- 2.15. Tower Super will provide members who contact Tower or Tower Super and request more details about the Master Trust Issue with a copy of a detailed description of the Master Trust Issue and the Repayment Methodology as they pertain solely to each member.

Report to ASIC

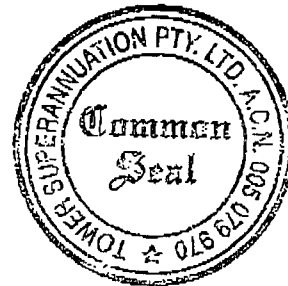
- 2.16. Tower Super will by a date agreed between Tower Super and ASIC, provide a report to ASIC signed by a director of Tower Super containing the following information in relation to the Master Trust Issue:
- (a) number of impacted members;
 - (b) the total Repayment provided and the average amount of the Repayment;
 - (c) confirmation that all impacted members have been provided with the relevant Repayment and that impacted members have been notified in accordance with clause 2.14.

3. ACKNOWLEDGMENTS

- 3.1 Tower Super acknowledges that ASIC:
- (a) may from time to time publicly refer to this undertaking;
 - (b) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution; and
 - (c) will place a copy of the executed undertaking on a Public Register.
- 3.2 Further, Tower Super acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct;
- (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking; and
- (c) this undertaking has no operative force until accepted by ASIC:

EXECUTED FOR TOWER
SUPERANNUATION PTY LTD (A.C.N. 005
079 970) UNDER COMMON SEAL IN THE
PRESENCE OF:)
)
)



Director

[Handwritten signature]

Witness

[Handwritten signature]
LEE SULLIVAN

Director

[Handwritten signature] DAVID CALLANDER

Witness

[Handwritten signature]
LEE SULLIVAN

**ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
PURSUANT TO SECTION 93AA OF THE ASIC ACT BY ITS DULY AUTHORISED
DELEGATE:**

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Jan Redfern
Executive Director, Enforcement
ASIC