

## Over \$20m in fines imposed against Vestey Trust promoter

*By Keeli Cambourne, Deputy Editor, SMSF Adviser and Matthew Burgess, Director, View Legal*

Liquidators in the Vestey Trust case of Australian Competition and Consumer Commission v Master Wealth Control Pty Ltd [2024] FCA 344 are likely to get less than \$1.5 million and possibly less than \$500,000 of the financial penalties despite fines of \$20 million being imposed, says a leading legal specialist.

Matthew Burgess, director of View Legal, said the court last week released its penalty decision in Australian Competition and Consumer Commission v Master Wealth Control Pty Ltd (Penalty) [2024] FCA 7950 and imposed a range of sanctions.

These sanctions included:

1. \$6 million of fines payable to the Commonwealth.
2. A five-year ban on making any representations in the supply or promotion of programs offered by DG Institute.
3. Disqualifying Ms Dominique Grubisa from managing corporations for a period of five years.
4. The organisation making an offer to redress each student who enrolled in the programs in the period April 2017 to November 2022 (estimated to be in the region of \$14.7 million).
5. The organisation providing a refund (in an amount equal to the course registration fee paid by each student plus interest from the date the student paid the course registration fee to the date the refund is provided) to each student who had historically provided their bank account details.
6. The organisation widely publish a notice substantially in the form set out below.

Early in 2023, the ATO warned consumers about certain schemes involving asset protection arrangements as they presented a compliance risk for SMSFs – particularly schemes that claimed to protect SMSF assets from creditors by mortgaging them to an asset protection trust, commonly called a Vestey Trust.

If trustees enter into schemes of this nature they risk contravening one or more super laws and penalties may apply.

“This type of asset protection strategy is often referred to as a 'gift and loan back' arrangement and has a chequered history,” Burgess said.

“In the 'Master Wealth Control Package', the arrangement in question was promoted as part of a wider property and investment offering that promised advice on 'how to locate and invest in undervalued property, undertaking property developments, locating undervalued businesses, renovating for profit and how to secure and grow your wealth'. The scheme was offered by the 'DG Institute', founded by a solicitor and barrister named Dominique Grubisa.”

Burgess said in April 2024, the ACCC successfully attacked all key aspects of the approaches of the DG Institute in the Federal Court decision of Australian Competition and Consumer Commission v Master Wealth Control Pty Ltd [2024] FCA 344.

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“In a sentence, the court concluded that the scheme was knowingly in contravention of Australian Consumer Laws and was conduct which was false and misleading,” he said.

“The notice the court has required in sentencing, however, is radically different to that proposed by Grubisa, which was also held to be misleading and deceptive. Interestingly, part of the suggested approach by Grubisa contained (apparently due to an oversight) the wording 'use British spelling please, ChatGPT'.”

In the sentencing, the court confirmed that the use of artificial intelligence was not something that should be regarded as a significant matter given that the relevant resolution did not require the exercise of significant legal skills or judgment, and instead “appeared to be the kind of thing which artificial intelligence is capable of producing effectively”.

Burgess said the court also stated that artificial intelligence does have a role to play in certain aspects of legal drafting and in circumstances where artificial intelligence is used, that any such draft is scrutinised and settled by a legal practitioner.

Below are the letters the court has stated must be sent and widely published within the next few weeks, subject to any appeal.

## **Misleading Representations by DG Institute**

Alternative paragraph for letter to students

I am writing to you because Master Wealth Control Pty Ltd, which operates under the business name “DG Institute” (DG Institute) has been ordered to do so by the Federal Court of Australia and because you enrolled in the Master Wealth Control (MWC) program between April 2017 and August 2022.

Alternative paragraph for publication on website and social media

Master Wealth Control Pty Ltd, which operates under the business name “DG Institute” (DG Institute) has been ordered by the Federal Court of Australia to provide to students who enrolled in the Master Wealth Control (MWC) program between April 2017 and August 2022 a refund equal to the course registration fee paid by that student.

Following proceedings commenced by the Australian Competition and Consumer Commission (ACCC), the Federal Court has declared that DG Institute contravened the Australian Consumer Law by making false or misleading representations and engaging in false or misleading conduct in contravention of section 18, 29(1)(g), 29(1)(m) and 34 of the Australian Consumer Law between April 2017 and November 2022 by:

- making statements in promotional material and instructional material for the MWC program that represented that the asset protection strategies called the “Vestey Trust” structure taught in the MWC program would enable consumers to protect all of their assets by setting up a specific trust called the Vestey Trust using transaction documents provided by DG Institute, which would provide complete protection from creditors when that protection was not provided by the adoption of those strategies;
- making statements in promotional material and instructional material for the MWC program which represented that the Vestey Trust structure taught in the MWC program had been tested and upheld as effective by the Full Court of the Federal Court of Australia in *Sharrment Pty Ltd v The Official Trustee in Bankruptcy* (1988) 18 FCR 449, when it had not.

The Federal Court has also declared that, in making the statements in promotional material and instructional material, and in drafting, reviewing, editing and approving content for the promotional material and instructional material, I was involved in DG Institute’s conduct described above by aiding, abetting and procuring the contraventions and by

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being knowingly concerned in and party to the contraventions.

Alternative paragraph for letter to students

The Court has ordered that DG Institute offer each student who enrolled in the MWC program in the period April 2017 to November 2022 a refund equal to the course registration fee paid by that student, plus interest at the pre-judgment interest rate set out in the Court's practice note (GPN-INT). You have been identified as one of those students.

Alternative paragraph for publication on website and social media

The Court has ordered that DG Institute offer each student who enrolled in the MWC program in the period April 2017 to November 2022 a refund equal to the course registration fee paid by that student, plus interest at the pre-judgment interest rate set out in the Court's practice note (GPN-INT).

Eligible students may choose whether:

1. to accept the redress, in which case they:
2. will be bound by the order;
3. will not be able to bring any claim, action or demand against DG Institute in relation to that amount of their loss or damage that has been paid to them as redress (that is, the course fee they paid to DG Institute for the MWC program plus interest);
4. will remain able to bring any claim, action or demand against DG Institute in relation to any other loss or damage they have otherwise suffered;
5. not to accept the redress, in which case they will be able to bring any claim, action or demand against DG Institute in relation to any loss or damage that they would otherwise be entitled to bring.

So that we can make payment of the redress to eligible students, you must (if you want to accept the redress), send an email to [email address to be nominated by DG Institute] within 21 days of receipt of the notice with the following information:

1. your name and bank account details;
2. your telephone number;
3. if known or recalled, the name of the corporate trustee established for you during the MWC program.

DG Institute will pay the refund owing to the eligible students as soon as practicable.

Yours sincerely

Dominique Grubisa