



AFP

AUSTRALIAN FEDERAL POLICE

FREEDOM OF INFORMATION

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Our ref: 2015/372

1 April 2015

Mr Phillip Sweeney

By Email: foi+request-1015-bc5f82aa@righttoknow.org.au

Dear Mr Sweeney,

Freedom of Information request

I refer to your email dated 11 March 2015 under the *Freedom of Information Act 1982* (the Act) seeking the following:

"The document I seek is a document which states on its face "How the Commissioner of the Australian Federal Police can prove the fraud".

Attached at Annexure A to this letter is my decision and statement of reasons for that decision. A "Schedule of Documents" identified as falling into the scope of your request is at Annexure B.

Information Publication Scheme (IPS)

As notified to you on 18 March 2015 and in accordance with section 11C of the Act, it has been decided to publish the documents in full in respect of your request. Publication of the documents and any relevant documents will be made on the AFP website at <http://www.afp.gov.au/about-the-afp/information-publication-scheme/routinely-requested-information.aspx> between 5 and 10 days after notification of this decision.

Yours sincerely

Nathan Scudder
Coordinator
Information Access
Operations Support
Australian Federal Police

STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY PHILLIP SWEENEY

I, Nathan Scudder, Coordinator, Freedom of Information, am an officer authorised under section 23 of the Act to make decisions in relation to the Australian Federal Police.

What follows is my decision and reasons for the decision in relation to your application.

BACKGROUND

On 11 March 2015, this office received your email in which you requested:

"The document I seek is a document which states on its face "How the Commissioner of the Australian Federal Police can prove the fraud".

SEARCHES

In relation to this request, a search was conducted of the AFP's investigation case management system PROMIS for records relating to your request.

DECISION

I have identified one document relevant to your request. A schedule of the documents and details of my decision in relation to the document is at Annexure B.

I have decided that the documents itemised at Annexure B are released to you in its entirety.

WAIVER OF CHARGES

Further, given that the request has totalled only 13 pages and was not a complex request to process, I am waiving any further fees and charges which are normally associated with the processing of applications under the Act.

EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

In reaching my decision, I have relied on the following documentary evidence:

- ❖ the scope of your application;
- ❖ the contents of the documents listed in the attached schedule;
- ❖ *Freedom of Information Act 1982*;
- ❖ Guidelines issued by the Department of Prime Minister and Cabinet; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

REVIEW RIGHTS

If you are dissatisfied with this decision you can apply for internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking IC review.

REVIEW RIGHTS under Part VI of the Act: Internal Review by the AFP

Section 53A of the Act gives you the right to apply for an internal review in writing to this Department within 30 days of being notified of this decision.

No particular form is required but it would assist the decision-maker were you to set out in the application, the grounds on which you consider that the decision should be reviewed.

Applications for a review of the decision should be addressed to:

Freedom of Information
Operations Support
Australian Federal Police
GPO Box 401
Canberra ACT 2601

REVIEW RIGHTS under Part VII of the Act: Review by the Information Commissioner (IC)

Alternatively, Section 54L of the Act gives you the right to apply directly to the IC or following an internal review by the AFP. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision. It would also help if you set out the reasons for review in your application.

Section 54S of the Act provides for the timeframes for an IC review submission. For an *access refusal decision* covered by subsection 54L(2), the application must be made within 60 days. For an *access grant decision* covered by subsection 54M(2), the application must be made within 30 days.

Applications for a review of the decision should be addressed to:

Office of the Australian Information Commissioner
GPO Box 2999
Canberra ACT 2601

Right to Complain

Section 70 of the Act provides that a person may complain to the IC about action taken by this Department in relation to your application.

A complaint to the IC may be made in writing and identify the agency against which the complaint is made.

The IC may be contacted on 1300 363 992. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.

SCHEDULE OF DECISION – CRM 2015/372
RELEASE OF DOCUMENTS – PHILLIP SWEENEY

Document No	Folio No	Date	Author	Description	Exemption	Reason
1	1-13	9/12/14	Victims' Action Group – The Provident Funds Fraud	Press Release	Released in full	This document is released to the applicant in full as he provided the document to the AFP.

Authorised Decision Maker:

Nathan Scudder
Coordinator
Freedom of Information
Operations Support
Australian Federal Police



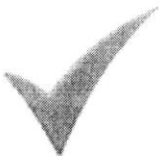
Date of Decision:

1 April 2015

Press Release

Victims' Action Group The Provident Funds Fraud

Proven



The Fraud is Proven

The Chairman of **ASIC**, Mr Greg Medcraft, has claimed that Australia is a '**Paradise**' for white-collar criminals - a statement he was forced to retract by the *Acting* Assistant Treasurer, Senator the Hon Mathias Cormann.

There are a number of white-collar criminals that should be well known to the **Australian Crime Commission (ACC)** that have an involvement in **Australia's Worst White-Collar Crime**, including:

- Ken Jarrett
- John Dorman Elliott
- Ken Biggins, and
- Peter Scanlon.

The crime they committed against the widows of former employees on **Elders IXL Limited** and subsidiary companies and the employees themselves is easily proven.

The High Court in England recently struck down 30 purported amending Deeds of a pension fund on the grounds that these Deeds had failed to comply with the legal formalities required for amending Deeds. Likewise there are 27 purported amending instruments related to **The Provident Fund** (aka **Elders IXL Superannuation Fund**) that fail to comply with the requirements of legally valid amending Deeds.

Lord Northington said in 1758:

"No point is better established than that, a person having a power, must execute it bona fide for the end designed, otherwise it is corrupt and void."

The legal principles of trust law when applied to this evidence, easily prove the fraudulent Breach of Trust causing substantial losses to the **trusts** (members and beneficiaries).

The Acting Assistant Treasurer, Senator the Hon Mathias Cormann has advised the victims of **Australia's Worst White-Collar Crime** to contact the **Australian Federal Police**.

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9 December 2014 THE AUSTRALIAN FEDERAL POLICE

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Evidence has been provided to the **Australian Federal Police** as advised by Senator Cormann.

All that Commissioner Andrew Colvin APM OAM of the **Australian Federal Police** has to do to prove **Australia's Worst White-Collar Crime** is simply to count the number of Directors' signatures that appear on a document executed by the well known white-collar criminal, Ken Jarrett.

How simple is that!

Commissioner Colvin, who is the Chair of the Board of the **Australian Crime Commission**, and the Board of the **ACC** should now ensure that Mr Chris Dawson, the CEO of the **ACC** now provide a report on the evidence and principles of law to both the Commonwealth Attorney-General and the Attorney-General of South Australia.

Victims' Action Group

The **Victims' Action Group** consists of members of two occupational pension funds, one established for male officers in 1913 and another established for female officers in 1963.

The Trust Estate of the fund established for female officers has "disappeared". Over \$100 million has *gone missing* from the Trust Estate of the fund established for male officers resulting in widows of qualifying male officers not receiving their pensions and qualifying male officers receiving only 20% of their lawful entitlements.

The pension fund established in 1913 was for most of its history called **The Provident Fund** but was later renamed the **Elders IXL Superannuation Fund**.

The Victims' Action Group is based on the **Maxwell Pensioners Action Group**
(<http://www.pensionersaction.org/733>)

Some Key Documents Provided to the **Australian Federal Police**

- Exhibit A Deed of Variation dated 20 November 1974 (Provided 29 June 2014)
- Exhibit B Consolidation Deed of Variation dated 6 May 1958 (Provided 30 June 2014)
- Exhibit C Letter from **News Limited** dated 15 October 2013 (Provided 30 June 2014)
- Exhibit D Letter from **RevenueSA** dated 4 February 2013 (Provided 30 June 2014)
- Exhibit E The **Elder Smith & Co Limited Provident Funds Act 1963 (SA)** (Provided 9 July 2014)
- Exhibit F Copy of a letter from **Finlayson & Co** to Mr G.A. Manning dated 26 November 1962 (Provided 9 July 2014)
- Exhibit G(a) **FREEDOM OF INFORMATION ACT 1982**
Extract from the Senate Hansard 25 November 1993 page 3696 (Provided 10 July 2014)
- Exhibit G(b) Purported "**Resolution**" dated 20 December 1982 (Provided 13 July 2014)

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- Exhibit H Letter from *SA Revenue* dated 13 March 2013 *{Provided 13 July 2014}*
- Exhibit I Purported Deed of Variation dated 26 August 1986 [*"The Jarrett Deed"*] *{Provided 1 August 2014}*
- Exhibit J Letter from former Fund Secretary dated 13 March 2013 *{Provided 1 August 2014}*
- Exhibit K Document titled *"The Robbing of the Widows"* *{Provided 3 August 2014}*
- Exhibit L Evidence from the Parliament of South Australia *{Provided 9 August 2014}*
- Exhibit M *"How the Commissioner of the Australian Federal Police can prove the Fraud"*

The consolidation Deed of Variation dated 6 May 1958 confirms the entitlement of a pension for life for male officers who have completed at least 15 years of service.

The Deed of Variation dated 20 November 1974 confirms the right of widows to receive an *"automatic"* survivorship pension.

The *"Jarrett Deed"* purports to abrogate these entitlements and replace them with a token lump sum benefit.

The *"Jarrett Deed"* can be proven to be void and fraudulent simply by counting the number of Directors' signatures that appear on this document. How easy is that!

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Australia's Worst White-Collar Crime

How the Commissioner of the *Australian Federal Police* can prove the Fraud

This document has been prepared to demonstrate how Commissioner Andrew Colvin APM OAM of the ***Australian Federal Police***, can prove how widows were defrauded out of their survivorship pension and how former employees of Elders IXL Limited and subsidiary companies received only a token retrenchment or retirement benefit after decades of loyal service

Exhibit M

FREEDOM OF INFORMATION ACT 1982
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Evidence Provided to AFP

The following documents have been included in evidence provided to **Australian Federal Police**:

- (i) A copy of a consolidation Deed of Variation dated 6 May 1958 [Exhibit B], and
- (ii) A copy of a purported Deed of Variation dated 26 August 1986 [Exhibit I].

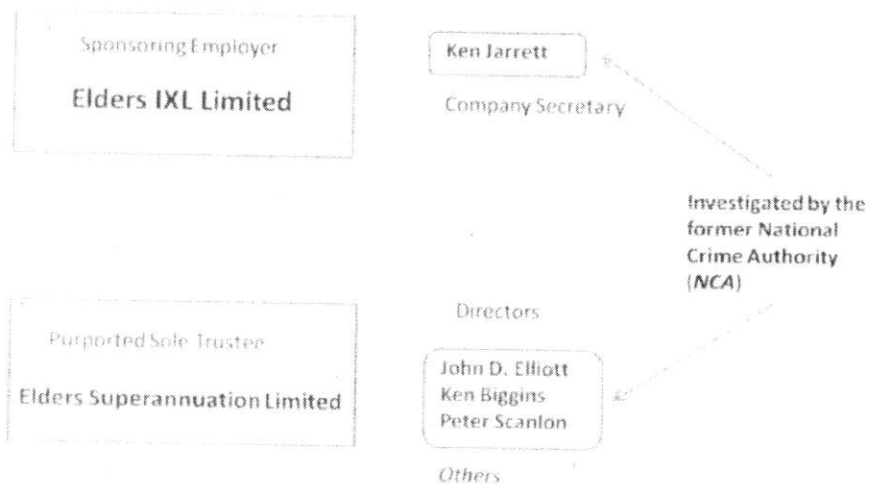
It should be noted that **Responsible Persons** of the purported corporate Trustee, criminally concealed the consolidation Deed of Variation dated 6 May 1958 from the *cestuis que trust* (ie members and beneficiaries) and that a copy of this important Deed was obtained with the assistance of the Deputy Premier and Attorney-General of South Australia, the Hon John Rau MP.

The former Fund Secretary, Ms Margaret O'Halloran, represented the purported Deed of Variation dated 26 August 1986 as the "**Trust Deed**" of the trust, when the legitimate "**Trust Deed**" that established the occupational pension trust was made on the 23 December 1913 [Exhibit J].

The 1913 Trust Deed was drafted by Sir John Downer who also co-drafted the **Australian Constitution**.

The parties to the document dated 26 August 1986 are as follows:

Parties to the 1986 Deed



The purported corporate Trustee that was a party to the "**Jarrett Deed**" had an "**all-star cast**" of Directors who had been the subject of two major investigations by the former **National Crime Authority (NCA)**.

The **National Crime Authority** was replaced by the **Australian Crime Commission**.

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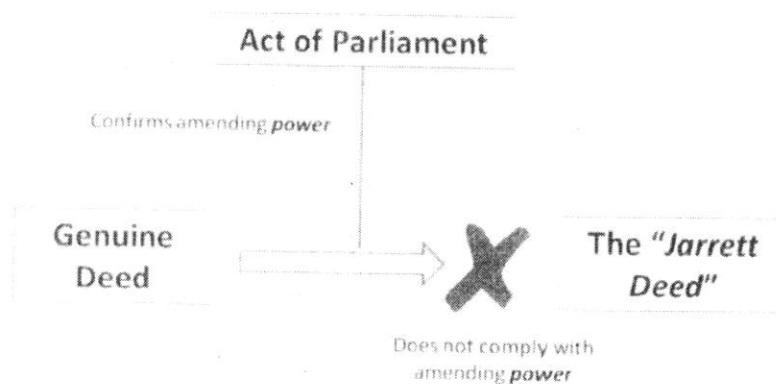
Mr Jarrett served a term of imprisonment for dishonesty, following the investigation known as *Operation Albert*.

The document dated 26 August 1986 should have been a "*Red Flag*" document to any investigative agency.

Proving the Fraud

The fraud can be proven using just two documents and an Act of the Parliament of South Australia.

Proving the Fraud



The Act of Parliament is the *Elder Smith & Co Limited Provident Funds Act 1963 (SA)*.

Why was this Act of Parliament necessary?

Refer to *The Laws of Australia* (Thompson Reuters) at [15.14.1450] under the section "*It is the trustee's plainest duty to obey the terms of the trust*" the following is stated:

"Where the trust instrument confers a power of amendment, the conditions and restrictions imposed on its exercise must themselves be strictly observed."

The Act of Parliament confirms this principle of trust law. The *Power of Amendment* provided by the original Trust Deed prohibited the application of the funds of the trust to unauthorised purposes. Therefore the holder of the *Power of Amendment*, the Board of the sponsoring Employer, could not amend the terms of the trust to allow benefits to be paid to employees of the new company that had acquired the original company's employees.

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Therefore an Act of Parliament was required to amend the terms of the trust, that was otherwise prohibited by the **Power of Amendment** contained in **Regulation 50**.

Examples of where the Courts have applied this principle of trust law are listed in **Appendix A**.

Here are the steps that the Commissioner of the **Australian Federal Police** needs to take in order to prove **Australia's Worst White-Collar Crime**:

Step 1

Go to **Regulation 50** in the consolidation Deed of Variation dated 6 May 1958 (Refer to **Appendix A**)

Regulation 50 provides the **Power of Amendment**.

Note how it is a condition imposed by the amending power (**Regulation 50**) that a majority of the Directors of the sponsoring Employer must execute any Deed of Variation.

This condition cannot be ignored as confirmed by the **Elder Smith & Co Limited Provident Funds Act 1963** (SA).

Step 2

Go to the *testimonium* (execution clause) of the 1958 Deed of Variation (**Exhibit B**) and note how a majority of the Directors have executed this Deed. In fact all the Directors in 1958 executed this Deed.

Step 3

Go to the *testimonium* (execution clause) of the purported 1986 Deed of Variation (**Exhibit C**) and count how many Directors of the sponsoring Employer have executed this Deed.

Step 4

Refer to the number of Directors required to constitute a majority in 1986 (**Exhibit D**).

The Fraud is Proven

By counting the number of Directors' signatures, Commissioner Colvin Dawson of the **Australian Federal Police**, can prove **Australia's Worst White-Collar Crime**, committed by a well known white collar criminal and his associates.

How difficult is that?

Mr Jarrett served a term of imprisonment for dishonesty.

The "**Jarrett Deed**" is void *ab initio* and the terms of the trust (**Regulations of the Fund**) were not amended by the "**Jarrett Deed**" or any instrument executed after the "**Jarrett Deed**".

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The right of a widow to receive a survivorship pension was not abrogated by the "*Jarrett Deed*" and a token lump sum benefit did not replace the entitlement to a pension for life for qualifying male officers.

Next Steps for the Australian Federal Police

Given that Mr Ken Jarrett was the subject of two major investigations by the former *National Crime Authority*, this matter needs to be progressed by the *Australian Crime Commission* in liaison with the *Australian Federal Police*, given the role of the Commissioner of the *AFP* as Chairman of the Board of the *ACC*.

It is appreciated that trust law and trust fraud may not be an area of expertise of the *AFP*. However the *Australian Crime Commission* should be able to have access to additional resources so as to assist the *Australian Federal Police* in "*analysing*" this trust fraud.

One of the functions of the *Australian Crime Commission* is to "*collect, correlate, analyse and disseminate criminal information and intelligence*".

This would clearly be the case where the "*criminal information and intelligence*" related to parties that had already been the subject of two major investigations by the former *National Crime Authority*.

The CEO of the *Australian Crime Commission* should now assemble the evidence provided to the *ACC* and obtain additional evidence from *ASIC* that confirms that over \$100 million was "*misappropriated*" from the Trust Estate of The Provident Fund.

Pursuant to *Section 12* of the *Australia Crime Commission Act 2002*, this evidence should be assembled and copies provided to:

- (i) The Commonwealth Attorney-General, Senator the Hon George Brandis QC, and
- (ii) The Deputy Premier and Attorney-General of South Australia, the Hon John Rau MP.

The Commonwealth Attorney-General will then be in a position, in conjunction with the Minister for Justice, to then provide further directions to both the *Australian Crime Commission* and the *Australian Federal Police* so that the well known white-collar criminal are brought to justice and the widows at long last receive their survivorship pensions.

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Exhibit A

Regulation 50

Referenced by the *Elder Smith & Co Limited Provident Funds Act 1963 (SA)*

Alterations
of Deed

ALTERATION OF DEED

50. No alteration to this Deed may be made which may authorise the application or use of any part of the Fund for any purpose other than—

- (a) The provision of pensions and benefits for officers their wives widows or dependants;
- (b) The making of any refund or allowance to officers;
- (c) The payment of the expenses arising out of the management control administration or protection of the Fund;
- (d) Indemnity to the Trustees as hereinafter provided;
- (e) Reimbursement to the Company of any losses of the nature herein specified.

But subject to this provision the Board by a majority of all the Directors for the time being testified by their executing the Deed hereinafter mentioned may from time to time and at any time by deed with the assent in writing of the majority of the Trustees alter all or any of the provisions of this Deed (including the provisions for the appointment and retirement voluntary or compulsory of the Trustees) and may make new provisions to the exclusion of or in addition to all or any of the provisions of this Deed and shall by such deed declare the time retrospectively or otherwise when such alterations or new provisions shall come into force. Such alterations and new provisions shall be deemed to be provisions in relation to the Fund of the same validity as if they had been originally contained in this Deed and shall be subject in like manner to be added to altered or modified. The provisions of this Deed and of any future deed are and shall be and shall be deemed to be regulations in relation to the Fund.

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Exhibit B

The testimonium (execution clause) of the 1958 consolidation Deed of Variation

<p>15th day of May</p> <p>SIGNED, SEALED AND DELIVERED by the said ALEXANDER JOHN MURDOCH in the presence of: 15 Dobbie</p> <p>SIGNED, SEALED AND DELIVERED by the said JAMES KEENE GUMPERT in the presence of: 15 Dobbie</p> <p>SIGNED, SEALED AND DELIVERED by the said GEORGE ALFRED DUMAS in the presence of: Rhoda Polglase</p> <p>SIGNED, SEALED AND DELIVERED by the said TOM EDGAR HARRIS SMITH in the presence of: 15 Dobbie</p> <p>SIGNED, SEALED AND DELIVERED by the said TAN EUGENE MCMAHON in the presence of: 15 Dobbie</p> <p>SIGNED, SEALED AND DELIVERED by the said ... in the presence of: 15 Dobbie</p> <p>SIGNED, SEALED AND DELIVERED by the said ... in the presence of: 15 Dobbie</p> <p>SIGNED, SEALED AND DELIVERED by the said ... in the presence of: 15 Dobbie</p> <p>SIGNED, SEALED AND DELIVERED by the said ... in the presence of: 15 Dobbie</p> <p>SIGNED, SEALED AND DELIVERED by the said ... in the presence of: 15 Dobbie</p>	<p>one thousand nine hundred and fifty-eight.</p> <p><i>Ally of the house</i></p> <p><i>R. H. ...</i></p> <p><i>Thoythomas</i></p> <p><i>Jan E. ...</i></p> <p><i>Edm. ...</i></p> <p><i>Ally of the house</i></p> <p><i>Thoythomas</i></p> <p><i>Jan E. ...</i></p>
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Exhibit C

The *testimonium* (execution clause) of the purported 1986 Deed of Variation

THE COMMON SEAL OF ELDERS
AND SUPERANNUATION LTD. was
affixed to the Deed of Variation
in accordance with the provisions
of the Deed of Variation.

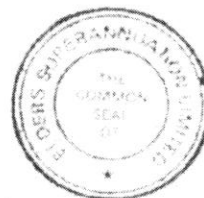


Witnessed by

Secretary

[Handwritten signature]

THE COMMON SEAL OF ELDERS
AND SUPERANNUATION LTD. was
affixed to the Deed of Variation
in accordance with the provisions
of the Deed of Variation.



Director

Secretary

[Handwritten signature]

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Exhibit D

Directors of Elders IXL Limited

<i>Executive Directors</i>		<u>Director Since</u>	<u>30-Jun-86</u>	<u>30-Jun-87</u>
J.D. Elliott	#1	27-Nov-81	Chairman	Chairman
K. L. James	#2	1984	Director	Director
K.R. Biggins	#1	1986		Director
P.D. Scanlon	#1	27-Nov-81	Director	Director
R.H. Lord		1988	Director	Director
R.T. Bartels		1988	Director	Director
M.R. Nugent		1988	Director	Director
 <i>Independent Directors</i>				
J.M. Ballieu		27-Nov-81	Dep Chairman	Dep Chairman
G.A. Burton		27-Nov-81	Director	Director
D.J. Darling		27-Nov-81	Director	Director
S.B. Myer		27-Nov-81	Director	Director
G.M. Nolan		1983	Director	Director
A.G. McGee		1979	Director	Director
J.M. McLaughlin		1980	Director	Director
D.B. Quinn		1982	Director	Director
J. Ray		1984	Director	
The Hon Sir Edwin Williams		1984	Director	Director
B.L. Cotton		1986	Director	Director
<hr/> Total Number of Directors			17	17

*No pay

(#1) Charged by the former *National Crime Authority* (NCA)

(#2) Charged by 6022 after turning Crown Witness and pleading guilty to lesser charges

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Appendix A

Cases where the Courts have declared purported Amending Instruments Invalid

- *Briggs v Gleeds (Head Office)* [2014] EWCH 1178 (Ch)
- *Walker Morris Trustees Ltd. v Masterson & Anor* [2009] EWHC 1955 (Ch)
- *Sovereign Trustees Ltd & Anor v Glover & Ors* [2007] EWHC 1750 (Ch)
- *Trustee Solutions Ltd & Ors v Dubery & Anor* [2006] EWHC 1426 (Ch)
- *Meier v Darzan Pty Limited & Anor* [2010] NSWSC 664
- *NSW MASONIC YOUTH PROPERTY TRUST & ANOR v HER MAJESTY'S ATTORNEY-GENERAL IN AND FOR THE STATE OF NSW & ANOR* [2009] NSWSC 1301
- *Hillcrest (Ilford) Pty Ltd v Kingsford (Ilford) Pty Ltd (No.2)* [2010] NSWSC 285
- *Re Cavill Hotels Pty Ltd* [1998] 1 Qd R 396.

Appendix B

Section 12 of the Australian Crime Commission Act 2002

Performance of functions

(1) Where the ACC, in carrying out an ACC operation/investigation, obtains evidence of an offence against a law of the Commonwealth or of a State or Territory, being evidence that would be admissible in a prosecution for the offence, the CEO must assemble the evidence and give it to:

- (a) the Attorney-General of the Commonwealth or the State, as the case requires; or
- (b) the relevant law enforcement agency; or
- (c) any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of the State or Territory to prosecute the offence.

Note 1: The CEO may also disseminate information in certain circumstances to law enforcement agencies and other bodies.

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