



**ASIC**  
Australian Securities &  
Investments Commission

**Australian Securities  
and Investments Commission**

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Our Reference:      FOI 185-2023

13 September 2023

Dear Mr Sweeney

**Freedom of Information Request No. 185-2023**

**Acknowledgement of Request**

I refer to your request dated 5 September 2023 under the *Freedom of Information Act 1982 (FOI Act)* in which you seek access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your request seeks access to the following:

*"Dear Australian Securities and Investments Commission,*

*In 2014 the SENATE ECONOMICS REFERENCES COMMITTEE undertook an "Inquiry into the performance of ASIC".*

*Included in the "Questions on notice for ASIC" was a question from the Committee related to a Defined Benefit Regulated Superannuation Fund that was constituted and established by a Trust Deed made on 23 December 1913 and which was closed to new members on 30 November 1997. This fund is legally identified by the original Trust Deed and not by the various "names of convenience" used over the last century which have included "The Provident Fund".*

*This superannuation fund was established as a "private trust" but became a Regulated Superannuation Fund in 1994 and was registered by APRA in 2006.*

*The Senate Committee sought a response from ASIC related to:*

*"Submissions 277, 109, 133 and 146 ) – The Provident Fund The committee has received several submissions regarding the Provident Fund, an employee benefit fund (superannuation fund) that was established in 1913. The submissions claim that qualifying male officers are entitled to a pension for life and their widows are then entitled to a survivorship pension. The submissions allege that the original trust deed was fraudulently altered and the conditions of the original trust deed are not being complied with (i.e. the pensions are not being paid)."*

*If pensions are not being paid then is is an ongoing offence, since former trustees cannot pay benefits fall due after the trustee has retired from the office of trustee. The*

innumbent trustee must pay pensions from the date that the trustee accepted the office of trustee.

In ASIC's written testimony to the Committee the following was stated:

"ASIC notes that a large number of the complaints and FOI requests received in relation to the Fund have not principally concerned allegations of fraudulent behaviour, but rather allegations that the trustee of the Fund has failed to comply with its disclosure obligations under section 1017C of the Act. Section 1017C of the Act requires trustees to provide a concerned person – typically a member of the fund within the preceeding 12 months – with certain information, including information they reasonably require for the purposes of understanding any benefit entitlements that they may have under the relevant superannuation product."

Now ASIC only makes reference to the provisions of Subsection 1017C(2) of the Corporations Act 2001 which is more relevant to members of Defined Contribution funds.

ASIC fails mention the provisions of Subsection 1017C(5) of the Corporations Act and related Regulation 7.9.45 and the penalty of two years imprisonment for the contravention of this subsection in Schedule 3 of the Corporations Act 2001 which is relevant to members and beneficiaries (eg widows) of Defined Benefit funds.

Trustees must provide a copy of the original Trust Deed that constituted and established the fund as well as copies of any amending Deeds following a written request by a person with a "beneficial interest" in the fund.

Why did ASIC seek to conceal this important information from the Senate Committee?

In a letter dated 17 January 2014 (ASIC Reference CCU-14\0006} addressed to Senator Williams, Belinda Taneski, Senior Manager, Misconduct and Breach Reporting (who was responding on behalf of Warren Day who was on leave) made the following representation:

"In this regard, we note that [name of fund member] is no longer a member of the Fund (since having received his payout). We also note that , from the information available to ASIC [name of fund member] was not a member of the Fund when old trust deeds were in force, and we would expect any rights under those old trust deeds would not be available to him and therefore not be available to his wife or widow".

Note: Regulation (Rule 30A) provides a "Survivorship Pension" to widows of male fund members.

The words "from information available to ASIC" means "this is what the trustee told us", since ASIC never obtained copies of the original Trust Deed or any amending Deeds as supporting evidence.

This representation to Senator Williams was a confirmation of a "Deed Substitution Fraud" where the "old trust deeds", which provide benefits of a value four to five times higher, are ignored by the incumbent trustee who instead relies on "new trust deeds", providing much lower benefits or no benefit (eg survivorship pension for widows) .

There is no such things as "old trust deeds".

If ASIC had enforced subsection 1017C(5) of the Corporations Act 2001 with a direction to PFS Nominees Pty Ltd (purported trustee from 20 January 2014 to 30 June 2016) and to NULIS Nominees (Aust) Ltd (purported trustee from 1 July 2016 to the present) to comply with subsection 1017C(5), then the "Deed Substitution Fraud" would have been quickly exposed.

Royal Commissioner Hayne stated the following in his Final Report in section 3.1:

*"ASIC is charged with enforcing financial services laws on behalf of the community. One of ASIC's objectives is to 'Take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth'. The community is entitled to expect and does expect, that financial services entities will comply with those laws."*

*So did ASIC ever give a direction to the purported trustees of this particular Defined Benefit fund to "enforce and give effect to the laws of the Commonwealth"?*

*The document I seek is a copy of any correspondence sent to any purported trustee of this particular Defined Benefit Fund giving a direction to comply with the provisions of Subsection 1017C(5) of the Corporations Act 2001 and related Regulation 7.9.45.*

*The search period is from 20 January 2014 to the present.*

*Yours faithfully,*

*P.C. Sweeney"*

As your request was received on 5 September 2023 and the 30-day statutory period for processing the request commenced on the day after the date of receipt, you should therefore expect a decision to be made by 5 October 2023.

The 30-day processing period may be extended should ASIC find it is necessary to consult third parties, where a charge is to be imposed on the processing of the request or for other reasons. You will be advised if there are changes to the 30-day processing period.

Please note that any documents released to you under the FOI Act may later be published online on the ASIC disclosure log in accordance with our obligation to do so under the Act. This requirement to publish released documents is subject to certain exceptions for example, personal or business information will not be published where it would be unreasonable.

If you have any questions or wish to discuss, please contact me at [krystal.fung@asic.gov.au](mailto:krystal.fung@asic.gov.au).

Yours sincerely,

A handwritten signature in black ink that reads "Krystal Fung". The signature is written in a cursive, flowing style.

**Krystal Fung**  
**(Authorised decision maker under section 23(1) of the FOI Act)**  
**For the Australian Investments & Securities Commission**