



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Our Reference: FOI 196-2023

19 September 2023

Dear Mr Sweeney

Freedom of Information Request No. 196-2023

Acknowledgement of Request

I refer to your request dated 14 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".

Committee decided to receive late submissions until 10 January 2014 and the Committees's final report was tabled on 26 June 2014.

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 fund members had been denied access to the Deeds of the fund by a purported trustee and so were unable to provide the Senate Committee with evidence in support of their submissions.

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

The following two paragraphs are extracts from the response from ASIC to the Senate Committee:

"In this regard, the Reporters have alleged that the trust deed has been illegitimately altered since the Fund's inception in 1913 to the detriment of members' benefits. As a result of this conduct, the Reporters consider that changes to the trust deed were not legally effective, meaning that the trust deed which was used to calculate their payouts is not effective.

As a result, a large number of the complaints received by ASIC concerning the Fund have been in relation to the Reporters' attempts to access trust deeds for the Fund dating back to its inception. The Reporters are of the view that the trustee is obliged to provide access to these documents under section 1017C of the Act."

The fund members (Reporters) should have been protected by the provisions of the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012 was given Royal Assent on 3 December 2012 and was supposed to come into operation on 1 July 2013.

The "Transparency Measures" required trustees to make a copy of the original Trust Deed that constituted and established each Defined Benefit fund that they administer along with copies of all amending Deeds available for download on the trustee's website.

If this Act had come into operation on 1 July 2013, then members would have had six months to lodge supporting submissions to the Senate Committee with copies of key Deeds or the fund.

However, under Class Order [CO 13/830] RSE licensees of registrable superannuation entities, ASIC delayed the commencement date of the requirements until 1 July 2014.

This was after the date that the Committee published its final report on 26 June 2014.

Trustees of Regulated Superannuation Funds should always have the original Trust Deed and amending Deeds held in a secure location, with copies of these Deeds ready to hand in electronic form (eg PDF files) for day-to-day administrative purposes.

It should have therefore been a relatively easy task to have these electric copies ready to be available for down load from the date of Royal Assent on 2 December 2012 until 1 July 2013 which was the nominated date for these important "Transparency Measures" to come into operation on 1 July 2013.

The document(s) I seek is a copy of any internal or external emails or correspondence or copy of working files that would provide a reason(s) or justification for delaying the commencing dated for a full year until 1 July 2014 of these important "Transparency Measures" that would have allow important evidence to be provided to the Senate Committee.

The search period is from 3 December 2012 to 30 June 2013..

Yours faithfully,

P.C. Sweeney"

As your request was received on 14 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 16 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.

Yours sincerely,

A handwritten signature in black ink that reads "krystal fung". The signature is written in a cursive, lowercase style.

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