



ASIC

Australian Securities & Investments Commission

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Our Ref: 26191/16

5 August 2016

Mr Phillip Sweeney
foi+request-2061-c3b2fb2b@righttoknow.org.au

Dear Mr Sweeney

Request under the *Freedom of Information Act 1982* for access to documents

I refer to your request under the *Freedom of Information Act 1982* (FOI Act) received by the Australian Securities and Investments Commission (ASIC) by email on 17 July 2016 in which you made the following request:

ASIC has been given a directive by the Minister responsible for ASIC to investigate the non-payment or delayed payment of life insurance products in repose (sic) to the CommInsure scandal reported by Fairfax Media.

This is what the Assistant Treasurer, the Hon Kelly O'Dwyer MP, said to Michael Brissenden of the ABC on 8 March 2016:

“We’re getting ASIC to do an investigation as to whether those practices that have been raised in relation to CommInsure are more widespread; whether there is a broader systemic issue with the industry”.

Life insurance products can be obtained either via a life insurance company or via a superannuation fund.

ASIC has been provided with a document that might be described as a “group death benefit policy” document dated 20 November 1974 that added Regulation 30A to the provisions of an occupational pension scheme established by a Trust Deed executed on the 23 December 1913 in the State of South Australia. Regulation 30A provides a death benefit to widows in the form of a survivorship pension following the death of their late husband.

It is important to note that a copy of this document that forms part of the governing rules of the 1913 Fund was not lodged with APRA as required by Section 29L of

the Superannuation Industry (Supervision) Act 1993. The earliest Deed lodged with APRA was dated 26 August 1986.

In 1974 the name of this fund was The Provident Fund, however in 1982 the name of the fund was changed to the Elders IXL Superannuation Fund. This fund was more recently known as the AusBev Superannuation Fund.

Since 20 January 2014 the Trust Estate of this occupational pension scheme has been under the control of subsidiary companies of the National Australia Bank.

The death benefits to widows are not being paid by the National Australia Bank. The defined benefit pension scheme was closed to new members on the 30 November 1997, so there will be widows alive until 2060 to 2070 who have a prima facie right to receive a survivorship pension pursuant to the provisions of Regulation 30A.

As part of its investigation order by the responsible Minister, ASIC should have sought to obtain a copy of any Deed of Variation that purports to repeal, revoke or delete Regulation 30A.

ASIC should be able to obtain a copy of such a document from either APRA or from PFS Nominees Pty Ltd or Nulis Nominees (Australia) Ltd which are subsidiary companies of the National Australia Bank.

The document I seek is a copy of any Deed of Variation or other instrument that purports to repeal, revoke or delete Regulation 30A.

I am the authorised decision-maker for the purposes of section 23 of the FOI Act.

Decision

Section 24A of the FOI Act

Section 24A(1) of the FOI Act states:

An agency or Minister may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document; and
- (b) the agency or Minister is satisfied that the document:
 - i. is in the agency's or Minister's possession but cannot be found; or
 - ii. does not exist.

ASIC's industry wide review of life insurance claims handling

You have referred in your request to ASIC's industry wide review of life insurance claims handling (**the life insurance review**). The life insurance review is aimed at

determining whether there are concerning claims handling practices across the life insurance industry. As part of this review, ASIC confirmed that it would:

- (a) review life insurance complaints data lodged with FOS and the SCT from 2013 to date, to determine the types of complaints received, the main issues in the industry, and the products and insurers they relate to;
- (b) review our complaints and breach reporting data from 2013 to date;
- (c) review data from consumer groups about life insurance complaints and casework from 2013 to date;
- (d) carry out targeted reviews of product disclosure statements for products offered by selected life insurers; and
- (e) engage with a range of stakeholders, including industry consultants, benchmarking services, financial advisers and practitioners, to receive qualitative assessments on the life insurance sector.

You have sought access to any Deed of Variation or other instrument that purports to repeal, revoke or delete Regulation 30A (**the documents**) in the context of the life insurance review. I have therefore limited my searches for the documents to this particular subject matter.

I have made enquiries of the relevant ASIC officers involved in the life insurance review. These enquiries have revealed that ASIC is not in possession of any documents falling within the scope of your request.

I am satisfied that all reasonable steps have been taken to locate documents relevant to your request and I am satisfied that the documents are not in ASIC's possession. I have therefore decided to refuse your request in accordance with s24A1(b)(ii) of the FOI Act.

Documents in an agency's possession

You have stated in your request *ASIC should be able to obtain a copy of such a document from either APRA or from PFS Nominees Pty Ltd or Nulis Nominees (Australia) Ltd which are subsidiary companies of the National Australia Bank.*

The FOI Act creates a right of access to a document in the possession of Commonwealth government agencies. It does not require an agency to take steps to bring a document into its possession in order to satisfy a request.

Review Rights

In the event that you are dissatisfied with the decision:

1. You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law GPO Box 9827 SYDNEY or by email to foirequest@asic.gov.au.

2. You may within 60 days after the day on which you have been notified of this decision, apply in writing to the Office of the Australian Information Commissioner (OAIC) for a review of my decision under section 54N of the FOI Act. You may contact the OAIC by post at GPO Box 5218 Sydney NSW 2001, by email at enquiries@oaic.gov.au or by telephone on 1300 363 992.

Right to complain

3. You may lodge a complaint with the OAIC in relation to the conduct of ASIC in the handling of this request. You may contact the OAIC as described above.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Evelyn Ong', written in a cursive style.

Evelyn Ong
(Authorised decision-maker under subsection 23(1) of the FOI Act)
for the Australian Securities and Investments Commission