

22 August 2016

Sent by Registered Mail- Article id: 5168 8126 4016

12 Highland Way
Highton, 3216

Attn: Mr Greg Medcraft

Chairman

ASIC

GPO Box 9827,
Sydney 2001

Dear Chairman

Re: Senate Inquiry – New Terms of Reference

Executive Summary

- The *Parliament of South Australia* has confirmed the widows' entitlement to a death benefit under the terms of one of Australia's oldest superannuation schemes;
- Two Members of *Parliament of South Australia* executed one of the Deeds providing pensions to widows along with a mentor to Mr Rupert Murdoch;
- **ASIC** has been provided with copies of genuine Deeds that were not lodged with the Regulator **APRA** as required by the *Parliament of Australia* and which have been criminally concealed from the widows;
- The widows' entitlement derives from a 1913 *Trust Deed* drafted by a co-drafter of the *Australian Constitution* – Sir John Downer;
- The **National Australia Bank (NAB)** relies on an unexecuted draft document and a document that bears the signature of a "**self-confessed fraudster and liar**" as justification for refusing to pay the widows their death benefits in their time of need and distress;
- The **National Australia Bank (NAB)** was in 2015 fined a record A\$38.8 million by **ASIC's** UK equivalent, the **Financial Conduct Authority (FCA)**, for concealing documents and records from a UK Regulator;
- The **National Australia Bank (NAB)** embeds its own lawyers into **ASIC** to ensure "*favourable regulatory outcomes*" for **NAB** at the expense of the victims of bank malfeasance such as widows as confirmed by **ASIC** Whistleblower, James Wheeldon, at the Senate Inquiry into **ASIC**.

ASIC's Obligations

- (i) **ASIC** has been given a directive by the Minister Responsible for **ASIC**, the Hon Kelly O'Dwyer MP, to "**investigate**" the non-payment or delayed payment of life insurance benefits to persons otherwise entitled to receive such a benefit. This would include the non-payment of death benefits.
- (ii) **ASIC** gave an undertaking to Justice Kenny in the Federal Court of Australia in **Sweeney v ASIC & D'Aloisio** {VID 323 of 2011} that if provided with additional evidence of misconduct associated with one of Australia's oldest occupational pension schemes, then **ASIC** would conduct a *bona fide* investigation into the alleged misconduct if such evidence could be provided to **ASIC**. Such evidence has now been provided to **ASIC** and **ASIC** will be in contempt of court if the undertaking given the Justice Kenny is now abrogated.
- (iii) If called before the Senate Economics Reference Committee to give evidence with respect to the Senate Inquiry into the non-payment of life insurance benefits **ASIC** officers have an obligation not to provide false and misleading testimony in contravention of the provisions of the **Parliamentary Privileges Act 1987** and in contravention of the **APS Code of Conduct** {Section 13 of the **Public Service Act 1999**} {Refer to **Senate Brief 13** below}.

Adele Ferguson of **Fairfax Media** has recently reported:

"Williams, whose re-election to the upper house was this week confirmed, told Fairfax Media that he would relaunch the Senate inquiry into life insurance that was announced before the election – but would broaden it to look at life insurance deals in super and the role of trustees."

I refer to my letter dated 15 August 2016 {received by **ASIC** on 19 August 2016} in which I made reference to a "**group death benefit policy**" document dated 20 November 1974, copy of which I have provided to **ASIC** as well as to the Secretary of the Senate Economics Reference Committee.

This document is an amending Deed {**Deed of Variation**} that has amended the provisions of an occupational pension scheme established by a Trust Deed dated 23 December 1913 in the State of South Australia by adding **Regulation 30A** to these provisions (called "**Regulations**").

Regulation 30A provides an automatic "**death benefit**" in the form of a survivorship pension to the widows of qualifying male fund members.

As covered in the letter dated 15 August 2016, a subsidiary company of the **National Australia Bank (NAB)** gained control of the Trust Estate (*Legal Estate*) of this occupational pension scheme on 20 January 2014 and now has the legal responsibility of paying these widows their survivorship pensions in their time of need and distress under the provision of the 1913 Trust Deed and lawful amending Deeds.

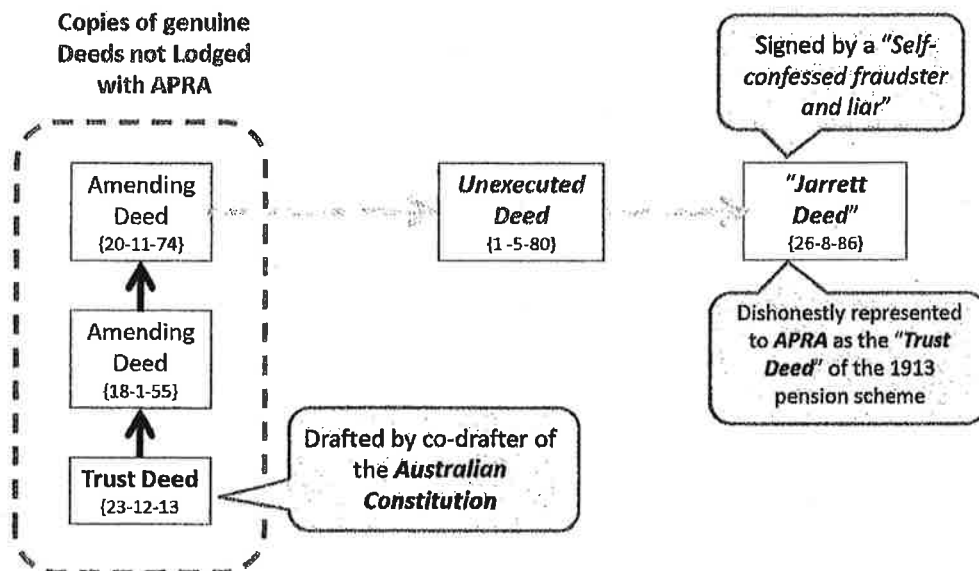
The **NAB** is refusing to pay the widows their death benefits and relies on an unexecuted document bearing no duty stamp notionally dated 1 May 1980 which purports to repeal **Regulation 30A** as justification for doing so.

The original Trust Deed executed on the 23 December 1913 that established an occupational pension scheme provided a limited death benefit to widows male fund members. The Trust Deed was drafted by (Sir) John Downer who was a former Attorney-General of South Australia and a twice elected Premier.

Sir John also co-drafted the *Australian Constitution* along with Australian's first Prime Minister, Sir Edmund Barton, and one of the first Justices of the High Court of Australia, Richard O'Connor.

This death benefit provided in the Trust Deed drafted by Sir John Downer was improved in an amending Deed executed on the 18 January 1955 [Exhibit #1] and then further improved in the amending Deed executed on 20 November 1974 which added **Regulation 30A**. [Exhibit #2]

How NAB Robs Widows



The amending Deed dated 18 January 1955 was executed by two members of the Parliament of South Australia as well as (Sir) Frederick Lloyd Dumas who was the Chairman of the publisher of the **Adelaide Advertiser** and a personal friend of Sir Keith Murdoch and a mentor to Rupert Murdoch [Exhibit #3].

The **National Australia Bank (NAB)** ignores these Deeds and relies on an unexecuted draft "Deed" notionally dated 1 May 1980 and a "Deed" dated 26 August 1986 as justification as to why **NAB** refuses to pay widows their death benefits in their time of their need and distress.

The unexecuted draft Deed purports to repeal all existing provisions and replace them with a new set of provisions providing different benefits of a much lower value.

However that is the reason the Deed was never executed by the independent Directors of Elder Smith Goldsbrough Mort Ltd, since if this draft Deed had been executed it would be invalid under the equitable doctrine of a "**Fraud on a Power**".

The Deed date 26 August 1986 has been executed, however it has been executed by the wrong parties.

This document also bears the signature of a former company Director who was once described on the front page of **The Canberra Times** as a "*self-confessed fraudster and liar*".

This Director, Ken Jarrett, served a term of imprisonment for dishonest conduct after three major investigations by the former **National Crime Authority (NCA)** after pleading guilty to acting dishonestly as a company director.

Mr Jarrett had pleaded guilty to one charge of failing to act honestly as an officer of Elders IXL between April 1986, and June 1990 before Justice Coldrey in the Supreme Court of Victoria.

Therefore any document associated with an employees' superannuation fund associated with that Director and dated between April 1998 and June 1990 that had been signed by that Director would be a "*red flag*" document requiring further investigation.

Even a cursory investigation proves the "**Jarrett Deed**" to be fraudulent as one might expect when the document has been signed by a fraudster.

History of the Widows' Pension Benefit

With the terms of reference of a Senate inquiry being expanded to cover life insurance benefits provided via superannuation funds and with a possible Royal Commission into the banking system it is important that the Chairman of **ASIC** understands the history of this pension provision.

This is especially so since a Select Committee of the Legislative Council, chaired by a former Attorney-General of South Australia, has confirmed the pension entitlement for widows.

This is what the Hon. G. O'H Giles M.L.C. stated in the Minutes of Evidence for the Select Committee on the ***Elder Smith & Co Ltd Provident Funds Bill 1963*** on 3 September 1963 following a question from the Attorney-General, the Hon Colin Rowe M.L.C.:

"The present fund – that is, Elder's Provident Fund – was established 50 years ago. It is one of the oldest Provident Funds in Australia. It is a pension fund, and not a Provident Fund in the lump sum sense. It provides pensions after 15 years of service. It provides death benefits, equal to three years' salary, immediately after entry to the fund. The fund is designed to provide an attraction to people to join the company's service, an encouragement to them to remain, and security for those officers who belong to the company and the fund".

Mr Gilles continues:

" At present, there are 1,099 members of the fund and 106 pensioners, including two widowed pensioners. The only reason why there are only two widowed pensioners is that until comparatively recently the fund only provided a pension during the life of the officer after retirement. However, that was altered some little time ago to enable them to opt to have a survivorship pension in favour of their wife if they so wished. The fund has assets of £2,838,000".

Therefore here is independent confirmation that the widows have a death benefit entitlement in the form of a survivorship pension. This Defined Benefit scheme was not closed to new members until 30 November 1997 and so there will be widows still alive until around 2060 to 2070 entitled to this death benefit.

The following comments are recorded in Hansard.

"This fund was created in 1913, a very early time for such a fund to be inaugurated. The company is to be complimented on being one of the pioneers in this State of this system, which has become an everyday practice in more recent times"

• – *The Hon Sir Arthur Rymill*

“The fund for male members was established in 1913”

• – *The Hon K.E.J. Bardolph*

“The Government considered it would materially assist all concerned if the Government introduced the Bill, which does not in itself benefit the company but, on the other hand, is designed to protect the superannuation rights of the company’s employees”

• – *The Hon C.D. Rowe*

Key principles of Trust Law

The following is stated in *Jacob’s Law of Trusts in Australia* (6th Ed)

CHAPTER TWENTY

Powers of a Trustee

[2001] The general nature of the powers has already been considered.¹ It is now the time to consider various particular powers of trustees, always bearing in mind, in relation to the exercise of any such particular power, the general principles previously related. A trustee in the execution of his trust has all the powers which are conferred upon him —

- (a) by the trust instrument;
- (b) by statute; and
- (c) by the court.

That is a trustee can only exercise a **power** if that **power** has been conferred on the office of Trustee by:

- (i) The trust instrument;
- (ii) Statute; or
- (iii) The Court.

If a **power** has been conferred on the office of trustee by one of these three means, then only a trustee who has been lawfully appointed to the office of trustee can validly exercise that **power**.

For example Part 2 of the **Trustee Act 1936 (SA)** confers certain **powers** on the trustees of trusts established in South Australia.

It should be noted that Part 2 does not confer any **amending power** on trustees to amend the terms of the trust.

Any such **power** would be to be reserved in the instrument establishing the trust.

If no **amending power** is reserved in the instrument establishing an "**Employees' Benefit Fund**" then **Section 35B** confers a power on the members of the fund still in the service of their Employer to amend the terms of the fund.

In the case of occupational pension schemes it is usual for the original Trust Deed that established the scheme to reserve an amending **power** which is conferred on the sponsoring employer (the company) or the natural person Directors of that company. Typically a **Power of Consent** will also be conferred on either:

- (i) The natural person trustees; or
- (ii) A sole corporate trustee; or
- (iii) The natural person Directors of a corporate trustee.

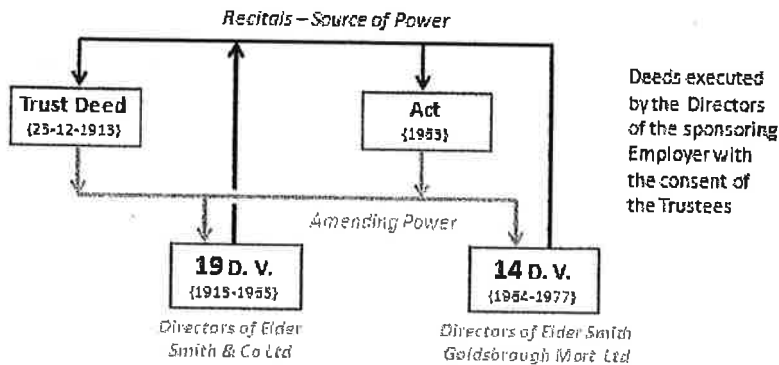
Alternatively the **Power of Amendment** might be conferred on the trustees subject to the consent of the employer or the directors of the company.

In the case of the 1913 occupational pension scheme the original Trust Deed executed on the 23 December 1913 conferred a **Power of Amendment** on the natural person Directors of the sponsoring employer, Elder Smith & Co Ltd and a **Power of Consent** on the natural person trustees.

When Elder Smith & Co Ltd was acquired by Elder Smith Goldsbrough Mort Ltd in 1963 an Act of Parliament was required to amend the **Power of Amendment** so that this power was conferred onto the natural person Directors of any "**successor company**" - the first such successor company being Elder Smith Goldsbrough Mort Ltd.

The original Trust Deed also prescribed a Deed to be the amending instrument.

Valid Deeds of Variation {Before 1980}



D.V. - Deeds of Variation

Act - *Elder Smith & Co Limited Provident Funds Act 1953 (SA)*

These principles have been confirmed to apply to the amending Deed dated 18 January 1955 {**Appendix A**} and the amending Deed dated 20 November 1974 {**Appendix B**}.

The "**Jarrett Deed**" recited no source of an amending **power** yet purported that the amending **power** had been conferred on a sole "**Trustee**" (instead on the natural person Directors of the sponsoring employer).

However what was the source of this purported amending **power**?

A purported amending **power** was not conferred on a sole "**Trustee**" by:

- (i) The Original 1913 Trust Deed;
- (ii) An Act of Parliament, or
- (iii) By a Court Order.

The Original 1913 Trust Deed conferred an amending **power** on the natural person Directors of Elder Smith & Co Ltd and an **Act of Parliament** was required to confer the amending **power** on another party - the Directors of any "**Successor Company**".

A trustee cannot validly exercise a **power** if no such **power** has been conferred on the trustee.

The following is stated in "**The Law of Trusts in Victoria**" by Graham Fricke and Otto Strauss on p 360 with respect to the exercise of powers that may be conferred on trustees:

"Another example resting on equitable principles is the inherent jurisdiction of the court to decide whether a power is given to the trustee, and if so to give directions on its extent, in particular where the trust instrument is ambiguous. A trustee is not obliged to assume any risks by deciding himself how to exercise a power or discretion, where a beneficiary could possibly attempt to impeach him afterwards".

The principle was approved by the High Court Of Australia in *Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar The Diocesan Bishop of Macedonian Orthodox Diocese of Australia and New Zealand*[2008] HCA 42; (2008) 237 CLR 66.

Another Act of the Parliament of South Australia would be required to confer the amending *power* onto a sole "*Trustee*".

There has been no such enactment.

The last valid exercise of the amending *power* that was actually lawfully conferred was recorded in the amending Deed executed on 15 February 1977.

The "*Jarrett Deed*" dated 26 August 1986 and all subsequent purported amending instruments are void and ineffective since the purported "*Trustee*" is attempting to exercise a *power* that the trustee does not possess and which has never been conferred on the office of trustee.

Concealing the Genuine Deeds from APRA

A common feature of recent banking scandals has been the concealment, destruction or tampering with documents and records that are favourable to the claims of the victims of bank malfeasance.

In 2015 the UK **Financial Conduct Authority (FCA)** fined the **National Australia Bank (NAB)** a record A\$38.8 million for concealing documents and records from a UK Regulator.

However this type of misconduct is systemic within the **National Australia Bank**.

The widows should have enjoyed the protection that the Parliament of Australia has attempted to provide Australian citizens who are forced to contribute 9.5% of their earning to be handed over to trustees of superannuation funds in a compulsory superannuation system.

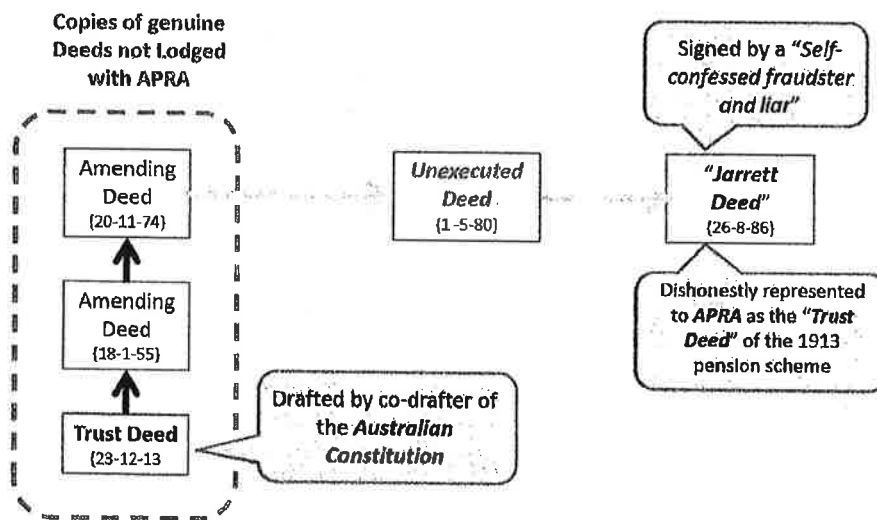
In 2006 copies of the 1913 Trust Deed and the amending Deeds providing increases benefits for widows should have been lodged with the Regulator – **APRA** pursuant to **Section 29L** of the ***Superannuation Industry (Supervision) Act 1993***.

However the earliest copy of an executed Deed provided to **APRA** was a copy of the "**Jarrett Deed**" dated 26 August 1986 which was dishonestly represented to **APRA** as the "**Trust Deed**" of the 1913 pension scheme.

APRA was not provided with a copy of the genuine Trust Deed that had been drafted by Sir John Downer and had been executed on the 23 December 1913.

Because of the dishonest representation **APRA** registered this fund in breach of **Section 29M** of the **Superannuation Industry (Supervision) Act 1993** issuing Registration Number R 1004830.

How NAB Robs Widows



ASIC Officer Misrepresents Fraudulent Deed

The practice of the **National Australia Bank** and its subsidiary companies is to embed their own lawyers into **ASIC** in order to obtain "**favourable regulatory outcomes**" was exposed by the **ASIC** Whistleblower, James Wheeldon, at the Senate Inquiry into **ASIC**.

An example of such a corrupt practice is apparent in a letter from **ASIC** dated 10 November 2009 (**ASIC** Ref: 36966/09) signed by **ASIC** Officer Greg Hackett.

Mr Hackett had been asked to enforce **subsection 1017C(5)** of the **Corporations Act 2001** and force the trustee at the time {CCSL} to provide a copy of the original 1913 Trust Deed plus copies of all amending Deeds executed on or before 25 March 1985 when a fund member ("*beneficiary*") accepted an offer of employment based on promised superannuation benefits.

Instead of enforcing disclosure of these Deeds, the only "*Deed*" that Mr Hackett forced the trustee to disclose was the purported amending Deed dated 26 August 1986, which was executed a year and a half after the offer of employment was accepted. Attached to this purported amending Deed was a set of purported "*Rules*".

Mr Hackett then makes the following representation:

The information before ASIC indicates that these are the rules that are relevant to your request, and CCSL has advised that it has provided you with a copy of the Trust Deed.

However the copy of the document provided was not the "*Trust Deed*". The genuine **Trust Deed** was executed on 23 December 1913. The document dated 26 August 1986 could at best only have been an amending Deed that amended the provisions of the 1913 Trust Deed.

However the document dated 26 August 1986 (the "*Jarrett Deed*") is easily proven to be fraudulent once the provisions of the 1913 Trust Deed are referenced.

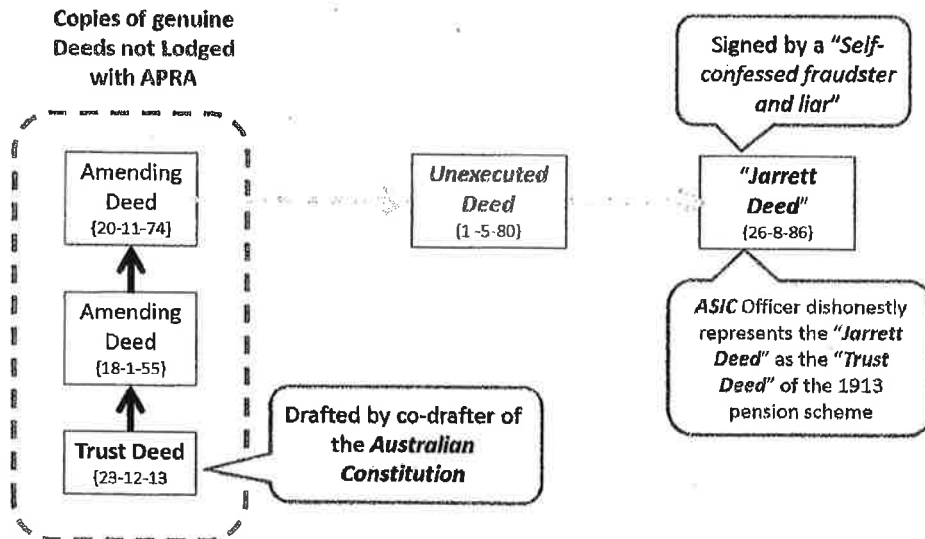
Therefore the "*Information before ASIC*" advised by Mr Hackett would have been information provided by the **NAB** lawyers embedded in **ASIC**. Since a subsidiary company of **NAB**, Plum Financial Services Ltd, provided day-to-day administration of the fund from 2006 to the present and was paying benefits in accordance to this set of purported "*Rules*" attached to the "*Jarrett Deed*" with minor amendments.

Mr Hackett would have been advised by the embedded **NAB** lawyer to misrepresent the 26 August 1986 as the "*Trust Deed*" of the Fund.

Mr Hackett has subsequently refused to enforce **subsection 1017C(5)** of the **Corporation Act 2001** and force disclosure of Deeds executed before 1986, even after Mr Hackett has been advised of a letter dated 24 June 2010 sent by the trustee to **APRA** confirming that the trustee had possession of these earlier Deeds. No doubt this was also under the direction of the embedded **NAB** lawyer.

Due to the large sums held on trust by superannuation fund trusts, the Parliament of Australia has made it an Indictable offence to wilfully conceal the Deeds of a regulated superannuation fund from a person who has a *beneficial interest* in that fund, which includes wives and widows.

How NAB Robs Widows



So the genuine Deeds are unlawfully concealed from one **Regulator** {APRA} and the second **Regulator** {ASIC} then misrepresents a document that bears the signature of a "self-confessed fraudster and liar" as the genuine **Trust Deed**, when in fact this document is easily proven to be fraudulent.

Systemic Misconduct

The wilful concealment of insurance related documents from a Regulator is not an isolated event at NAB.

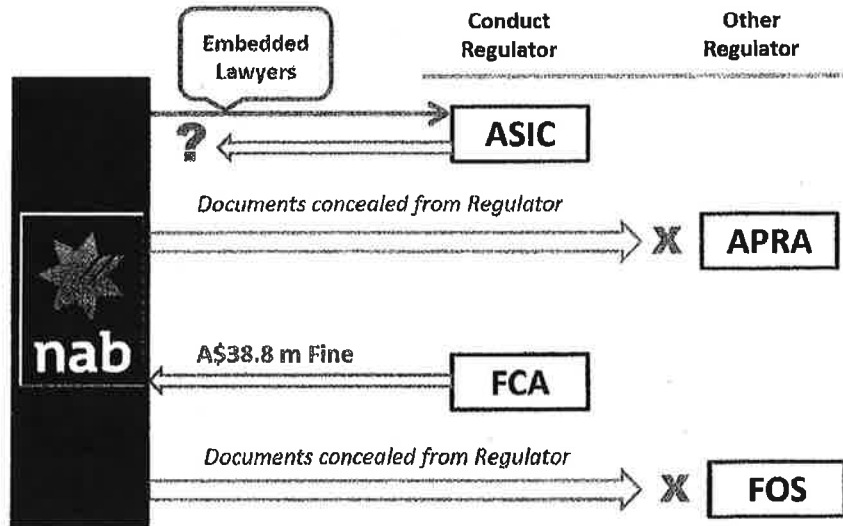
In 2015 the NAB was fined a record A\$38.9 million by the UK **Financial Conduct Authority** (FCA) for wilfully concealing documents and records from the UK **Financial Ombudsman Service** (FOS).

<http://www.smh.com.au/business/banking-and-finance/more-questions-over-nab-culture-after-huge-clydesdale-fine-20150415-1nlf99.html>

Yet exactly the same type of misconduct has been repeated in Australia by the NAB in relation to insurance documents that have been concealed from another Regulator –APRA.

After imposing the record fine on the **NAB**, the **FCA** forced the **NAB** to raise **A\$3.2 Billion** to cover compensation claims that the **NAB** was seeking to avoid by concealing evidence from the **FOS**.

Systemic Misconduct



However **NAB** has been unable to embed its own lawyers into the UK **FCA** and so the outcome for the victims of malfeasance by **NAB** has been quite different in the United Kingdom compared to Australia.

Victims of **NAB** malfeasance in the UK have received **A\$3.2 Billion** in compensation, whilst widows in Australia have received nothing following the death of their husband.

The Position of the High Court of Australia

The High Court of Australia in *Finch v Telstra Super Pty Ltd* [2010] HCA 36; (2010) 242 CLR 254 ruled at [35]:

"The government considers that the taxation advantages of superannuation should not be enjoyed unless superannuation funds are operating efficiently and lawfully. For that reason it has, by procuring the enactment of the *Superannuation Industry (Supervision) Act 1993* (Cth) ("the Supervision Act") and regulations made under it, imposed quite rigorous regulatory standards."

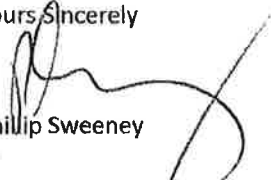
All Australians who are forced to be members of superannuation funds have a **legitimate expectation** that "**The Rule of Law**" will be applied to the administration of their superannuation fund in a compulsory superannuation system so as to protect their retirement "**nest eggs**".

Why have the widows who are entitled to a death benefit from an occupation pension scheme that was established in 1913 been denied such protection?

The **NAB** relies on a document that was executed by a convicted fraudster as justification for denying widows their death benefits in their time of need and distress.

Where is the "**Tough Cop on the Beat**" when the widows need him most?

Yours Sincerely


Phillip Sweeney

*{Postscript: I shall send the Chairman another document revealing the dishonest scams being employed by **NAB** personnel who are under a statutory duty to act honestly and in the best interests of the members and beneficiaries of regulated superannuation funds being administered by **NAB**. The purpose of these scams is to deny fund members access to "fund documents" and to mislead and deceive them as their fund membership status. These scams are most likely employed more widely by **NAB** and not just in relation to this particular pension scheme}*

Cc Senator John Williams

Secretary of the Senate Economics Reference Committee

Definitions

Trust Deed

The *Australian Law Dictionary* (Oxford University Press) defines "trust deed" as follows:

"The instrument (a deed of settlement) establishing a trust. The deed must have four essential elements of a trust (trustee, beneficiary, the trust property, and some obligation annexed to the property) along with the three certainties (intention, subject matter, object). An express trust must be established in writing by a DEED (signed, sealed and delivered) by a settlor, who settles an amount of money or other property on the trust and establishes the terms on which the trustee holds the trust property"

There is only one "**Trust Deed**" properly so called for any trust and that is the founding Trust Deed that establishes the trust. Subsequent Deeds that vary the terms of the trust are properly called **Deeds of Variation or Amending Deeds**.

Governing Rules

In superannuation trusts, the words "**governing rules**" are used for the terms of the trust. The governing rules are not a single document but a set of documents that includes:

- The founding Trust Deed that established the trust
- Any subsequent Deed of Variation that amended the terms of the trust
- Any order or direction from the court in relation to the trust
- Any Act of Parliament specific to the trust
- The relevant State Trustee Act
- Relevant Commonwealth legislation

A consolidation Deed of Variation does not render the founding Trust Deed obsolete. The founding Trust Deed and Deeds of Variation that have been consolidated must be retained by the trustee so that a court would be able to determine a "**true construction**" of the terms of the trust.

Butterworths Australian Legal Dictionary defines "**governing rules**" as follows:

"In relation to superannuation fund, approved deposit fund or a unit trust, any trust instrument, other document or legislation, or combination of these, governing the establishment and operation of the fund or unit trust."

Legal Principles

A Deed has no legal substance until the Deed has been executed by the correct parties and properly witnessed in accordance with relevant statutory provisions.

A Deed of a trust established in South Australia which has been executed before 1 July 2006 must be properly duty stamped in accordance with the provisions of the **Stamp Duty Act 1923 (SA)**, otherwise such a Deed cannot be produced before a Court as evidence (except in criminal proceedings).

A Trustee cannot exercise a power unless that power has been conferred of the trustee by either:

- (i) The trust instrument;
- (ii) By Statute; or
- (iii) The Court

The following is stated in "**The Law of Trusts in Victoria**" by Graham Fricke and Otto Strauss on p 360 with respect to the exercise of powers that may be conferred on trustees:

"Another example resting on equitable principles is the inherent jurisdiction of the court to decide whether a power is given to the trustee, and if so to give directions on its extent, in particular where the trust instrument is ambiguous. A trustee is not obliged to assume any risks by deciding himself how to exercise a power or discretion, where a beneficiary could possibly attempt to impeach him afterwards".

The New South Wales Court of Appeal in **Re Dion Investments Pty Ltd** [2014] NSWCA 367 making reference to the ruling of the trial judge stated at [30]:

"He said that the "basal understanding" is that "once a person has given his or her property on trust then that trust is unalterable save and except insofar as the trust deed itself makes it unalterable [sic; scil: alterable]". Reference was made to **Re Crawshay (1888) 60 LT 357**, **Re Walker [1901] 1 Ch 879** and **Re Downshire Settled Estates [1953] Ch 218** (which was affirmed by the House of Lords: **Chapman v Chapman [1954] UKHL 1; [1954] AC 429**)."

An example of the implications of a lack of a **Power of Amendment** arose in **NSW Masonic Youth Property Trust v Attorney-General** [2009] NSWSC 1301.

Appearing before a Senate Committee

http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief1

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Senate Brief No.13 provides:

Responsibilities of witnesses

The responsibilities of witnesses before Senate committees are effectively the converse of the rights of those witnesses. Witnesses have the following responsibilities:

- To attend a committee hearing when summoned by the committee;
- Not to release a written submission unless the committee has authorised its publication;
- To give evidence that is not false or misleading;
- To produce documents relevant to the committee's inquiry if ordered to do so;
- To be prepared to fully justify any objections to answering questions or any requests to give evidence in private session.

Contempt of the Senate and remedies for contempt

When the actions of a witness or another person influencing a witness have the effect of obstructing the inquiries of a Senate committee (or future inquiries), those actions may be treated as contempts.

Examples of such offences include:

- Refusing without reasonable excuse to answer a question;
- Giving false or misleading evidence;
- Falling to attend or to produce documents when required to do so;
- Intimidation of a witness;
- Adverse treatment of a witness;
- Wilfully disturbing a committee while it is meeting.

The *Parliamentary Privileges Act 1987* provides that a House of Parliament may impose terms of imprisonment or substantial fines for individuals and corporations as a penalty for contempt.

Appendix A

Record of Exercise of Amending Power Conferred by original Trust Deed



Deed of Variation dated 18 Jan 55

By this **Deed**, the parties on whom the **Power of Amendment** has been conferred {*the Directors of the original sponsoring employer*} hereby exercise this power with the consent of the parties on whom the **Power of Consent** has been conferred {*the natural person trustees*}.

Amendment to the provisions of the Trust
Deed executed on the 23 December 1913

Add Regulation 10A

Executed by:

Majority of Directors of the original
sponsoring Employer

Majority of Trustees

Appendix B

Record of Exercise of Amending Power Conferred by original Trust Deed

{As amended by an Act of Parliament}



Deed of Variation dated 20 Nov 74

By this **Deed**, the parties on whom the **Power of Amendment** has been conferred {*the Directors of a successor sponsoring employer*} hereby exercise this power with the consent of the parties on whom the **Power of Consent** has been conferred {*the natural person trustees*}.

Amendment to the provisions of the Trust
Deed executed on the 23 December 1913

Add Regulation 30A

Executed by:

Majority of Directors of a successor
sponsoring Employer

Majority of Trustees

Exhibit #1

ELDER SMITH & CO. LIMITED

THE PROVIDENT FUND

W H E R E A S by Deed dated the twenty-third day of December One thousand nine hundred and thirteen made between Elder Smith & Co. Limited (hereinafter called "the company") of the first part James Harvey and Allick James Murray both of Adelaide in the State of South Australia Directors of the company and Alfred Horsley Chapman of Adelaide aforesaid Secretary of the company of the second part and certain persons whose names from time to time were or might be subscribed and whose seals were or might be affixed thereto (being at the time of their execution thereof officers of the company under the age of sixty-five years) of the third part a Provident and Guarantoc Fund was established in connection with the business of the company AND WHEREAS the said Deed dated the Twenty-third day of December One thousand nine hundred and thirteen has been heretofore varied and altered by six several deeds of variation dated the Seventh day of October One thousand nine hundred and thirty-one the Twenty-ninth day of August One thousand nine hundred and thirty-nine the Twenty-sixth day of March One thousand nine hundred and forty the Eleventh day of December One thousand nine hundred and forty-one the Twenty-sixth day of October One thousand nine hundred and forty-eight and the Thirtieth day of June One thousand nine hundred and fifty-three AND WHEREAS pursuant to the said Deed of Variation dated the Twenty-sixth day of October One thousand nine hundred and forty-eight the name of the Fund was changed to "The Provident Fund" and the Regulations under and governing the said Fund were renumbered NOW THEREFORE pursuant to Regulation 44 of the Regulations governing the Provident Fund we ALEXANDER JOHN MELROSE FREDERICK LLOYD DUNN and COLLIER ROBERT CUDMORE all of Adelaide CLIVE ALEXANDER McFARLANE of "Pleasant Park" Penola and IAN RICHARD McTAGGART of "Nooning" Port Augusta Directors of Elder Smith & Co. Limited being a majority of all the Directors for the time being of the company as required by the said Regulation 44 with the assent of the said ALEXANDER JOHN MELROSE the said FREDERICK LLOYD DUNN and REGINALD WAHNER SEEDSMAN of Adelaide Assistant General Manager being the majority of the Trustees of the said Fund testified by their execution of this Deed DO BY THIS DEED make the following alterations in the provisions of the said Deed dated the twenty-third day of December One thousand nine hundred and thirteen as varied and altered as aforesaid, namely,



{Body of Deed - Add Regulation 10A (Later renumbered to Regulation 30)}

IN WITNESS whereof the parties hereto have executed these presents
this eighteenth day of January One thousand nine hundred and
fifty-five.

SIGNED SEALED AND DELIVERED by the
said ALEXANDER JOHN MELROSE in the
presence of

Alex. J. Melrose

SIGNED SEALED AND DELIVERED by the
said FREDERICK LLOYD DUMAS in the
presence of J.S. Dobbs

Frederick Lloyd Dumas

SIGNED SEALED AND DELIVERED by the
said COLLIER ROBERT CUDMORE in the
presence of J.S. Dobbs

Collier Robert Cudmore

SIGNED SEALED AND DELIVERED by the
said CLIVE ALEXANDER McFARLANE in
the presence of J.S. Dobbs

Clive A. McFarlane

SIGNED SEALED AND DELIVERED by the
said IAN RICHARD McTAGOART in the
presence of J.S. Dobbs

I. R. McTaggart

SIGNED SEALED AND DELIVERED by the
said ALEXANDER JOHN MELROSE in the
presence of J.S. Dobbs

Alex. J. Melrose

SIGNED SEALED AND DELIVERED by the
said FREDERICK LLOYD DUMAS in the
presence of J.S. Dobbs

Frederick Lloyd Dumas

SIGNED SEALED AND DELIVERED by the
said REGINALD WALTER SEEDSMAN in
the presence of J.S. Dobbs

Reginald Walter Seedsmann

Exhibit #2

ELDER SMITH GOLDSBROUGH MORT LIMITED

THE PROVIDENT FUND

W H E R E A S By Deed dated the twenty third day of December One thousand nine hundred and thirteen (hereinafter referred to as "the principal Deed") made between Elder Smith & Co. Limited of the first part James Harvey and Alick James Murray both of Adelaide Directors of the said Elder Smith & Co. Limit and Alfred Horsley Chapman of Adelaide Secretary of the said Elder Smith & Co. Limited of the second part and certain persons whose names were or from time to time might be subscribed and whose seals were or might be affixed thereto (being at the time of their execution thereof officers of the said Elder Smith & Co. Limited under the age of sixty five years) of the third part a Provident and Guarantee Fund was established in connection with the business of the said Elder Smith & Co. Limited AND WHEREAS the principal Deed has from time to time been varied and altered by Deeds of Variation and the name of the Fund has been changed to "The Provident Fund" AND WHEREAS by Deed dated the 6th day of May 1956 the principal Deed was further varied and altered and the Regulations governing the Fund were consolidated and amended and the Regulations then governing the Fund were repealed and new Regulations were prescribed and such new Regulations (hereinafter referred to as "the Regulations") are set forth in a schedule to the said last-mentioned Deed AND WHEREAS the Regulations have been varied and altered from time to time by Deeds of Variation AND WHEREAS the Regulations have been further varied and altered by the Elder Smith & Co. Limited Provident Funds Act 1963 of the Parliament of South Australia AND WHEREAS pursuant to a Deed dated the 5th day of March 1964 made in accordance with the provisions of



Regulation 49a of the Regulations Elder Smith Goldsbrough Mort Limited whose registered office is at Currie Street Adelaide (hereinafter called "the company") has taken the place of the said Elder Smith & Co. Limited in relation to the Fund and the company is now "the company" for the purposes of the principal Deed and the Regulations and the powers authorities and discretions by the principal Deed or by the Regulations conferred upon the Board of Directors of the said Elder Smith & Co. Limited are now exercisable by the Board of Directors of the company NOW THEREFORE pursuant to Regulation 50 of the Regulations governing the Provident Fund we HENRY NORMAN GILES JOHN NEIL McEWIN ALFRED MOXON SIMPSON NORMAN SMITH YOUNG BRUCE ROY MACKLIN JOSEPH IAN NORMAN WINTER and HAROLD CHARLES SCHMIDT all of Adelaide being a majority of all the Directors of the Company with the assent of the said JOHN NEIL McEWIN ALFRED MOXON SIMPSON and BRUCE ROY MACKLIN and IVAN EDWARD CROSSING Assistant General Manager and RONALD WILLIAM GAYLER Manager both of Adelaide being all the trustees of the said Fund present at a duly constituted meeting of the trustees called to consider the matter (testified by their execution of this Deed) DO BY THIS DEED make the following alterations in the provisions of the principal Deed as varied and altered as aforesaid, namely:

{Body of Deed - Add Regulation 30A

IN WITNESS whereof the parties hereto have hereunto set
their hands and seals the 20th day of November One thousand
nine hundred and seventy four.

SIGNED SEALED and DELIVERED by)
the said HENRY NORMAN GILES in)
the presence of:)

H. Giles

[Signature]

SIGNED SEALED and DELIVERED by)
the said JOHN NEIL McEWIN in)
the presence of:)

J. McEwin

[Signature]

SIGNED SEALED and DELIVERED by)
the said ALFRED MOXON SIMPSON)
in the presence of:)

A. Simpson

[Signature]

SIGNED SEALED and DELIVERED by)
the said NORMAN SMITH YOUNG in)
the presence of:)

N. Young

[Signature]

SIGNED SEALED and DELIVERED by)
the said BRUCE ROY MACKLIN in)
the presence of:)

B. Macklin

[Signature]

SIGNED SEALED and DELIVERED by)
the said JOSEPH TAN NORMAN)
WINTER in the presence of:)

J. Winter

[Signature]

SIGNED SEALED and DELIVERED by)
the said HAROLD CHARLES SCHMIDT)
in the presence of:)

H. Schmidt

[Signature]

SIGNED SEALED and DELIVERED by)
the said JOHN NEIL McEWIN in)
the presence of:)

J. McEwin

[Signature]

SIGNED SEALED and DELIVERED by)
the said ALFRED MOXON SIMPSON)
in the presence of:

Alfred Moxon Simpson

SIGNED SEALED and DELIVERED by)
the said BRUCE ROY MACKLIN in)
the presence of:

Bruce Roy Macklin

SIGNED SEALED and DELIVERED by)
the said IVAN EDWARD CROSSING)
in the presence of:

Ivan Edward Crossing

SIGNED SEALED and DELIVERED by)
the said RONALD WILLIAM GAYLER)
in the presence of:

Ronald William Gayler

Exhibit #3

NEWS LIMITED

15 October 2013

Phillip Sweeney
12 Highland Way
Highton VIC 3216

Dear Sir

I refer to your letters dated 7 October 2013 to Rupert Murdoch and Julian Clarke about The Provident Fund.

We do not have records that go back far enough but we do have a manuscript that states James Frederick Downer was Chairman since the first year of Advertiser Newspapers Pty Limited until he died 29 May 1942, and (Sir) Lloyd Dumas was Managing Editor and Director from early 30's and became chairman 9 June 1942, but retired 1 Aug 1967.

Yours faithfully



Ian Philip
Chief General Counsel