
The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

27 December 2017

Sent by Registered Mail - Article id: 517802408014 Received 7:38am Monday 8th Jan 2018

Peter O'Connor

S 47F



Attn: Ms Nicole Smith

Chair

NULIS Nominees (Australia) Ltd

PO Box 200

North Sydney, 2059

Dear Ms Smith

Re: Request for Fund Documents

I refer to an article by Richard Gluyas published in *The Australian* (21-12-17) titled "**Bank inquiry's 'massive dragnet'**".

Richard writes:

"Royal commissioner Kenneth Hayne has cast a "*massive dragnet*" over the financial services industry, asking banks, insurance companies and superannuation funds to report all misconduct cases and behaviour falling short of community expectations since 2008.

In the Royal Commission Terms of Reference "**misconduct**" is defined to include conduct that:

- (a) Constitutes an offence against a Commonwealth, State or Territory law, as in force at the time of the alleged misconduct; or
- (b) Is misleading, deceptive, or both; or

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- (c) Is a breach of trust, break of duty or unconscionable conduct; or
 - (d) Breaches a professional standard or a recognised and widely adopted benchmark for conduct.

Richard quotes a senior banker who described the request as “*a massive 10 year dragnet*”.

“Everyone’s going to set the bar very low for pre-disclosure because they’ll want to avoid a future situation where the royal commissioner’s all over them like a rash for holding back information from the outset” he said.

Richard notes that Royal Commissioner Hayne has asked the companies to provide their “*comprehensive*” responses by 29 January 2018.

On 20 January 2014 a subsidiary company of the **National Australia Bank (NAB)** gained administrative control of the Trust Estate of an occupational pension scheme established by a Trust Deed executed on the 23 December 1913 in the State of South Australia. In 2014 this fund was known as the **AusBev Superannuation Fund**.

The existence of this Trust Deed is confirmed by the *Elder Smith & Co Ltd Provident Funds Act 1963* (SA).

Elder Smith & Co Limited was acquired by Elder Smith Goldsbrough Mort Ltd in 1963.

The value of the assets of the Trust Estate transferred to the control of PFS Nominees Pty Ltd {a subsidiary company of **NAB**}, on the 20 January 2014 was A\$ **443,207,841**. You were the Chair of this corporate trustee.

Superannuation funds are established as ‘*trusts*’ because the laws of trust should protect the entitlements of fund members and beneficiaries over a period that can last for many decades.

A ‘*trust*’ can be defined as a set of legal obligation annexed to trust property which is enforceable by a court with equitable jurisdiction.

Therefore the starting position is that the Trust Estate with a value of A\$ **443,207,841** on the 20 January 2014 has legal obligations impressed by the original Trust Deed dated 23 December 1913 and any lawful amendments that have been made over the last century to the provisions of this original Trust deed.

I am a ‘*concerned person*’ pursuant to **subsection 1017C(9)** of the *Corporations Act 2001*.

Request for a copy of the original Trust Deed

I am requesting a copy of the executed Trust Deed dated 23 December 1913 pursuant to **subsection 1017C(5)** of the *Corporations Act 2001* and **Section 84B** of the *Trustee Act 1936*(SA)

If the original counterpart of the original Trust Deed has been lost and there is no copy of the executed deed, then am requesting a copy of the Court Order that re-instates the terms of the original Trust Deed based on extrinsic evidence held by the South Australian Attorney-General’s Department.

Request for copies of the amending Deeds

I am requesting a copy of the amending Deed {Deed of Variation} dated:

- 6 May 1958

This amending Deed amended the pension benefit formula for qualifying male fund members to improve the pension entitle if a male fund member was retrenched before attaining the early retirement age of 60.

This improved formula is included in **Regulation 29**.

The provisions of the amending Deed dated 6 May 1958 are referenced in the Memorandum to Staff dated 26 April 1965 [**Exhibit #1**].

I am also requesting a copy of any executed and duty stamped amending Deed that purports to delete or revoke **Regulation 29**.

If there has been a purported transfer of legal obligations from the occupational pension scheme established by the Trust Deed dated 23 December 1913 to the **Plum Superannuation Fund** and/or the **MLC Super Fund** then I am requesting a copy of the amending Deeds that amended the Trust Deeds of these other funds to incorporate and match the legal obligations of the fund established by the Trust Deed dated 23 December 1913.

Yours Sincerely

Peter O'Connor

{**Postscript:** A copy of this letter will be included in the submission to the Royal Commission made on behalf of members and beneficiaries of the occupational pension scheme established by the Trust Deed executed on the 23 December 1913 – a pension scheme that was once known as the **Elders IXL Superannuation Fund**}

Exhibit #1

April 26th, 1965.

HEAD OFFICE — ADELAIDE
AND AT PERTH, ALBANY,
MELBOURNE, GEELONG, PORTLAND, SYDNEY,
NEWCASTLE, GOULBURN, BRISBANE,
LONDON



CABLES TO ELDERSON
TELEGRAMS TO ELDERSON
LETTERS TO BOX 794, G.P.O.
TELEPHONE: 90 9211
90 1231
TELEX: 90 482

ELDER SMITH GOLDSBROUGH MORT LIMITED

(INC. IN S.A.)

WOOL, PRODUCE & TOBACCO BROKERS; GENERAL MERCHANTS; STOCK & STATION, LAND, TRAVEL,
CHARTERING & INSURANCE AGENTS

IN REPLY PLEASE QUOTE:

PENSION AND PROVIDENT FUNDS

ELDER HOUSE
499-501 BOURKE STREET
MELBOURNE

Since Integration, certain queries have arisen in respect of the various Provident Funds to which eligible members of the Company have been admitted as members and in an endeavour to outline the basic principles of the Funds the following facts are advised:-

Prior to Integration, the principal Provident Funds were:-

- (a) Elder's: Known as "The Provident Fund" for male staff.
- (b) Goldsbrough's: The "Officers' Provident Fund" covering both male and female staff.

Although these Funds still exist, the "Officers' Provident Fund" has been closed to new members since 1st January, 1963.

All male staff who have become eligible to join a Provident Fund since 1st January, 1963, have been admitted to "The Provident Fund".

The principal benefits to be derived from these Funds, are set out hereunder:-

"The Provident Fund"

On retirement at the age of 65, or at such earlier date as may be approved, the Officer receives a yearly pension calculated on the basis of:-

<u>Years of service</u>	x	Average Annual Salary over
Age at Retirement		Last 7 years of service.

With a maximum of $\frac{2}{3}$ of final year's salary.

The Officer has the option to convert part of his pension into a reversionary pension for his wife and, subject to certain tests as to health, up to one half of his pension into a lump sum.

In the event of his death whilst in the service of the Company, his next of kin receives 3 times his annual salary or 5 times pension payable at date of death, whichever is the greater.

"Officers' Provident Fund"

On retirement at the age of 65 or such earlier date as may be approved, the Officer receives a lump sum payment with the option of converting all or any part of this lump sum to an annual pension with the object of increasing the pension payable to him under the Goldsbrough Supplementary Pension Fund (non contributory) with a reversionary one half pension for his widow.

In the event of the death of an Officer from any cause during service with the Company, it is guaranteed that the beneficiaries will receive an amount not less than three times his annual salary at date of death.

Further information on any of the Funds, may be obtained from the Personnel Officer.

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