



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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4 April 2019

By email only: foi+request-5319-461e6af4@righttoknow.org.au

Dear Mr Sweeney

Freedom of Information Request No. 056-2019
Notice under s24AB of the FOI Act

I refer to your request dated 21 March 2019 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:

'On the 27 March 2019, Phil Chronican, the Acting NAB Group CEO, will be committing NAB {and its subsidiaries} to act as a "Model Litigant" when suing and when being sued {for example by ASIC}. This public commitment will be made before the House of Representatives Standing Committee on Economics in Canberra.

At the NAB Annual General Meeting on 19 December 2018 a copy of a Deed of Variation dated 20 November 1974 was provided to the previous NAB CEO, Andrew Thorburn, after the AGM.

This Deed confirms that NAB's superannuation trustee, NULIS Nominees (Australia) Ltd, should be now paying death benefits in the form of a survivorship pension to the widows of members who joined a sub-fund now administered by NULIS before it was closed to new members on 30 November 1997.

This sub-fund has been known by many names, however, it was established by a Trust Deed made on the 23 December 1913 in the State of South Australia.

The founding Trust Deed reserved a Power of Termination which when exercised in accordance with its terms would allow the legal obligations annexed to the Trust Estate {fund} (to be brought to an end at a future date) {for example if this fund and its members were subject to a "successor fund transfer" to another fund}.

A request has been made to NULIS to provide to ASIC a copy of the instrument under hand that would evidence that the Power of Termination has been exercised in accordance with its terms, should such a document exist.

I am seeking a copy of this document if ASIC now has possession of this document as provided by NULIS.

The widows' pension benefit is provided by Regulation 30A in the Deed of Variation date 20 November 1974 {Note: ASIC does have possession of a copy of this Deed of Variation where the Sponsoring Employer in 1974 was called Elder Smith Goldsbrough Mort Ltd}.

I am also seeking a copy of a later dated Deed of Variation {and properly duly stamped} that might purport to delete or otherwise abrogate the widows' pension entitlement, that might have been provided to ASIC by NULIS.

The search period is from when ASIC commence proceeding against NULIS in the Federal Court to the present.' (my emphasis added)

I have taken your above request to be comprised of two parts as follows:

- I. You seek access to a copy of the instrument 'that would evidence that the Power of Termination has been exercised in accordance with its terms', and
- II. You seek access to a copy of 'a later Deed of Variation...that might purport to delete or otherwise abrogate the widows' pension entitlement, that might have been provided to ASIC by NULIS'.

Section 15(2)(b) of the FOI Act

I am writing to advise you that your request does not satisfy the requirement set out in section 15(2)(b) of the FOI Act which states that a request for access to a document must 'provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency... to identify it'.

In relation to the first part of your request whereby you state that 'death benefits...[to be paid to] members who joined a sub-fund now administered by NULIS'. This reference to a 'sub-fund' is too vague and does not identify what fund you are seeking documents in relation to, especially as you have stated that 'This sub-fund has been known by many names...' A search cannot be conducted as it is ambiguous as to what fund you are referring to.

You also state in Part I in your request that 'A request has been made to NULIS to provide to ASIC a copy...' I am unsure as to who made this request and additional details in relation to this is required to identify and search for the documents you seek.

To assist you in revising your request please identify by name the fund in Part I of your request. Furthermore, in this part of your request please provide additional details about the request made to NULIS that you refer to such as identifying who made the request and when it was made.

For the reasons stated above, your request in its current form does not adequately identify the documents sought and it would therefore be my intention to refuse your request given that a practical refusal reason exists within the meaning of section 24AA(1)(b) of the FOI Act.

Request consultation process

The purpose of this letter is to provide you with an opportunity to revise your request so that the practical refusal reason no longer exists before a final decision is made. Should you wish to submit a revised request please take into consideration the issues raised in this notice to ensure that they are addressed.

Timeframe

The statutory timeframe for notifying an applicant of a decision on a request for access under the FOI Act is 30 days from the day the agency receives the request. Please note that in accordance with section 24AB(8) of the FOI Act, the time for processing your request is suspended from the day that you receive this letter, and resumes on the day after ASIC receives from you one of the following:

- written notification that you wish to withdraw the request;
- a revised written request addressing the matters raised above; or
- written notification that you do not wish to revise your request.

If you choose to do one of the following actions above mentioned, you must do so **within 14 days** of the date of this letter (**the consultation period**). If I have not heard from you by the end of the consultation period, your request will be taken to be withdrawn in accordance with section 24AB(7) of the FOI Act.

During the consultation period you may wish to seek assistance in reframing your request. If you have any questions or wish to discuss, please contact me on Jessica.Zhang@asic.gov.au or on (03) 9280 4156.

Yours sincerely,

Jessica Zhang

Freedom of Information Officer

(Authorised decision-maker pursuant to subsection 23(1) of the FOI Act)