



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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17 April 2019

Dear Mr Sweeney

Freedom of Information Request No. FOI 056-2019

I refer to your request for access to documents made under the *Freedom of Information Act 1982 (FOI Act)* dated 21 March 2019 and which was subsequently revised on 13 April 2019. You requested access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your original request dated 21 March 2019 sought 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 duty 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.'

On 13 April 2019 you revised your request to clarify references you made in your original request as follows:

'The Defined Benefit superannuation fund has been known by many names.

Before 20 January 2014 it was known as the AusBev Superannuation Fund.

After 20 January 2014 when the fund came under the administrative control of the National Australia Bank trustee, PFS Nominees Pty Ltd, this Defined Benefit Fund was known and the Carlton and United Breweries sub-plan.

This name was retained when this fund came under the administrative control of another NAB trustee, NULIS Nominees (Australia) Ltd on 1 July 2016.

Please note that in a Defined Benefit fund members do not have individual investment accounts - all the fund's assets are held in a common asset pool that has to be identified as an individual accounting entity so that the fund can be subject to review by the fund actuary'

I am the authorised decision-maker for the purposes of section 23 of the Act and this letter gives notice of my decision.

Decision

I have conducted searches of ASIC's records and have not located any documents falling within the scope of your request. My decision is to therefore

refuse your request for access to documents under s 24A of the FOI Act on the basis that all reasonable steps have been taken to find these documents and I am satisfied that no such documents exist. The reasons for my decision are set out below.

Information considered

In reaching my decision, I have considered the following:

- the FOI Act, in particular s 24A;
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (**FOI Guidelines**);
- searches conducted by ASIC staff; and
- the terms of your request.

Section 24A of the FOI Act

Section 24A of the FOI Act relevantly provides:

Document lost or non-existent

(1) 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.*

I have conducted searches of ASIC's records and have not located any documents falling within the scope of your request. In particular, I have consulted with ASIC's Financial Services Enforcement Unit and the Investment Managers and Superannuation Unit to assist with searching for documents. Both teams have undertaken searches of their records and have informed me that no relevant documents exist. For these reasons, I am satisfied that all reasonable steps have been taken to locate the documents relevant to your request and I am satisfied that the documents do not exist. I have therefore decided to refuse your request pursuant to s 24A(1)(b)(ii) of the FOI Act.

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 an internal review of my decision under section 54B of the FOI Act. This review is an independent process conducted by a Senior Freedom of Information Officer at ASIC. This request should be addressed to me or to the Senior Manager, Freedom of Information, GPO Box 9827, Brisbane QLD 4001 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 set out above.

If you have any questions or wish to discuss, please contact me on Jessica.Zhang@asic.gov.au or (03) 9280 4156.

Yours sincerely

Jessica Zhang

Freedom of Information Officer

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