



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Level 7, 120 Collins Street,
Melbourne VIC 3000
GPO Box 9827,
Melbourne VIC 3001

Tel: +61 1300 935 075
Fax: +61 1300 729 000

www.asic.gov.au

Our Reference: CCU-18\0397

5 September 2018

The Hon Sarah Henderson MP
Federal Member for Corangamite
3A/195 Colac Road
Waurin Ponds VIC 3216

By email: Sarah.Henderson.MP@aph.gov.au

Dear Ms Henderson

Thank you for your email dated 8 August 2018 addressed to Mr James Shipton, Chair of the Australian Securities and Investments Commission (**ASIC**), regarding Mr Phillip Sweeney and his concerns about NULIS Nominees (Australia) Ltd and the National Australia Bank.

We understand that you are concerned that Mr Sweeney raises serious issues which require ASIC investigation. Mr Sweeney's primary concerns were first reported to us in March 2009 regarding his defined benefit superannuation fund payout which he believes was lower than what he was entitled.

ASIC made comprehensive inquiries into Mr Sweeney's concerns, including with his former employer, the fund's trustee and the Australian Prudential Regulation Authority. ASIC determined not to take further action as outlined in the **attached** letters to Mr Sweeney dated 10 November 2009 and 2 July 2010. We also advised Mr Sweeney to seek his own legal advice and that we would no longer correspond with him as our assessment of his concerns was complete.

Following this, Mr Sweeney continued to raise concerns with ASIC, including allegations about criminal conduct and misappropriation from a trust fund up to and during the 1980s. ASIC received similar correspondence from other parties.

After extensive review, ASIC determined not to take further action because, variously:

- there was insufficient evidence of breaches of the laws we administer;
- ASIC did not have jurisdiction to pursue these matters (such as to enforce any obligations under private trust or contractual arrangements or under state-based trust law);
- ASIC did not exist at the time the alleged misconduct occurred and ASIC is statute-barred from taking criminal action in relation to conduct occurring more than five years previously; or
- Mr Sweeney's and others' allegations and/or their understanding of the law was misconceived.

In line with our previous correspondence to Mr Sweeney, we did not reply to his concerns. We did respond to others raising similar concerns as outlined in the **attached** letter (redacted for confidentiality). We are aware that Mr Sweeney has seen a copy of this correspondence.

We understand that Mr Sweeney disagrees with our assessment of his concerns and the facts. Mr Sweeney sought the Commonwealth Ombudsman's review of ASIC's decision making. The Ombudsman's investigation was concluded without making a finding of administrative deficiency against ASIC.

We also understand that Mr Sweeney has attempted to challenge his superannuation payout in the Superannuation Complaints Tribunal, but the Tribunal did not find in his favour. We encouraged Mr Sweeney to seek legal advice about pursuing any private rights that may be available to him.

ASIC continues to receive correspondence from Mr Sweeney and Parliamentarians on Mr Sweeney's behalf which we review for new issues and actions as appropriate, or otherwise place on file and not respond in line with our previous correspondence to him.

We expect, and are confident that, Mr Sweeney will not agree with any of ASIC's views with respect to the matters raised by him. However, we are confident that we have fully and sufficiently considered the matters raised over the last nine years.

Unfortunately, there is nothing further ASIC can do to assist Mr Sweeney. We consider Mr Sweeney's concerns have been thoroughly considered and we do not intend to engage in any further dialogue with Mr Sweeney.

If you would like further information or to discuss the above, please contact me on 03 9280 3505 or 0411 549 032.

Yours sincerely



Warren Day
Senior Executive Leader – Assessment and Intelligence
Regional Commissioner – Victoria
Australian Securities and Investments Commission