

Case Management Hearing

RECEIVED
Federal Court of Australia

15/08/2019 1:55:00 PM AEST

13 August 2019

Send by Express Mail 60543264032094

37 Darian Rd

Torquay, 3228

The Registrar

Federal Court of Australia, New South Wales Registry

Locked Bag A6000
Sydney South NSW 1235

nswdr@fedcourt.gov.au

RE: Case Management Hearing – 10 September 2019

Federal Court Rule **41.04(2)**

Number: **NSD1654/2018**

Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v MLC NOMINEES PTY LTD & ANOR

Presiding Officer – Justice Yates

Dear Registrar

Today I have sent by Express Post two Affidavits.

I again refer to this serious matter as I have been verbally intimidated by journalist James Frost who then proceeded to publish a defamatory and intimidatory article in the **Australian Financial Review**, as well as on Social Media which I believe was an attempt to force me to withdraw as an “**Interested Person**” and/or discredit me as a witness in these important proceedings.

I shall be sending a copy of the Affidavit affirmed on the 8 August 2019 to the CDDP.

The Affidavit affirmed on 13 August 2019 includes evidence of misconduct by a number of ASIC officers which will be reference in future Affidavits.

Yours Sincerely

Phillip Sweeney

{oursuperfund2012@gmail.com}

Attachments:

Affidavit affirmed on 8 August 2019 {Sent by Express Post 13 August 2019}

Affidavit affirmed on 13 August 2019 {Sent by Express Post 13 August 2019}

Commonwealth Director of Public Prosecutions

Re:

Federal Court of Australia

District Registry: New South Wales

Number: NSD1654/2018

Applicant:

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Respondent:

MLC NOMINEES PTY LTD & ANOR

Interested Person:

PHILLIP CHARLES SWEENEY

AFFIDAVIT

(Order 14, rule 2) On 8 August, 2019, I

Phillip Charles Sweeney

Address: 37 Darian Road, Torquay, 3228

Occupation: Retired

say on
oath-

- 1 I am a person who is now an "Interested Person" in these proceedings following the lodging of an affidavit dated 1 May 2019 which was filed on the 2 May 2019.
- 2 I am also a person who was a party to proceedings before the Honourable Justice Kenny {VID 323/2011} where I withdrew these proceedings after the **Australian Securities and Investments Commission {ASIC}** gave an undertaking to the Honourable Justice Kenny to the effect that ASIC would investigate allegations of maladministration of a **Defined Benefit** occupational pension scheme established by a Trust Deed made in South Australia on the 23 December 1913 if further evidence should come to light. The Attorney-General's Department of South Australia and the Parliament of Australia have been able to provide such "*additional evidence*".
- 3 I now have to defend myself from the defamatory and intimidatory statements made by James Frost in the **Australian Financial Review [Annexure PCS18]** as well as on **Social Media [Annexure PCS19]**.
- 4 I am now suffering sleep deprivation, headaches and other signs of anxiety arising from this public disparagement.
- 5 I have lodged a complaint with the Australian Press Council Inc [Annexure PCS20].

August 8, 2019

1

6 Mr Frost and the **Australian Financial Review** have not to date published a retraction with respect to these representations.

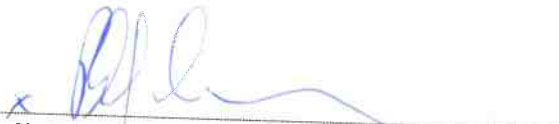
Affirmed by the deponent)

At Geelong)

in Victoria)

on 8 August 2019)

Before me:)


Signature of deponent

Signature of witness



JOANNE FARLEY
Magistrate
Magistrates Court of Victoria

Law Courts
Railway Terrace
GEELONG

Annexure PCS18

annexure PCS18
This is the exhibit marked "Phillip Sweeney" referred to in the Affidavit of Phillip Sweeney now produced and shown and sworn this 8/8/19
Before me, [Signature]

Article from the Australian Financial Review published on 31 July 2019 {Page 17}

Serial pest hijacks ASIC's case against NAB over fees scandal

James Frost

A man described by the information regulator as a vexatious applicant is once again tying up resources and potentially delaying a landmark case by inserting himself into proceedings over the multibillion-dollar fees for no service scandal.

Phillip Charles Sweeney has filed an affidavit as an interested person in the matter between the Australian Securities and Investments Commissioner and NAB - the first major piece of litigation launched by the corporate regulator against a bank for charging fees it had no entitlement to.

Mr Sweeney has spent years investigating an alleged fraud involving the Elders IXL staff super fund. He alleges the beneficiaries of the fund have been ripped off by the fund's trustees and believes the regulators are involved in a conspiracy to cover it up.

"I have every right to insert myself into this case," Mr Sweeney said.

"This case is far more serious than fees for no service, fees for no service is a bit of a sideshow."

NAB says it has repaid or offered about \$14 million for the matter. This year the bank revealed it had set aside more than \$1 billion to repay customers and has close to 500 people working fulltime on refund programs.

Mr Sweeney has a history of pestering regulators with time consuming requests filed under the Freedom of Information Act. He was banned from contacting ASIC for a year at one point after firing off a deluge of requests under the pseudonyms James Bond, Pussy Galore and Goldfinger.

In the case he has inserted himself into, the regulator is alleging NAB's actions have amounted to misleading



ASIC has launched litigation action against NAB. PHOTO: DAIRIAN TRAYNOR

and deceptive conduct under the ASIC Act and false or misleading conduct under the Corporations Act.

The action against NAB subsidiaries MLC and NULIS were launched late last year but the trial has yet to begin. On Monday a case management hearing was stood over until September 10, 2019, or more than a year after ASIC revealed it was suing the bank.

The Elders IXL staff fund eventually became the Carlton & United Breweries fund and has been overseen by NAB subsidiary NULIS since 2016. NULIS was raked over the coals during the Hayne commission for allowing the bank to charge fees for services it never provided. Former NULIS chairwoman Nicole Smith endured hours of questioning during the royal commission over why she as trustee allowed the bank to charge financial advice fees to customers who did not receive advice, including dead people.

When asked by Michael Hodge QC whether NULIS was hopelessly conflicted she replied, "I believe it was a con-

flicted position. I do not believe it was hopelessly conflicted."

Mr Sweeney's relationship with the regulator was brought to a head in 2014 when he peppered ASIC with 180 requests over 360 weeks. He was briefly considered a security threat after signing some requests as "James Bond - 007 (Licensed to Kill)".

The Administrative Appeals Tribunal found that his requests to ASIC ate up hundreds of man hours.

His actions were found to constitute "an abuse of process that has and continues to interfere unreasonably with ASIC's operations".

He was declared a vexatious applicant and ordered not to contact ASIC directly for more than a year.

ASIC wasn't the only target of Mr Sweeney's however with the Australian Prudential Regulation Authority also complaining of being drowned in FOI requests. APRA said over the financial year 2011/12, Mr Sweeney was responsible for 79 per cent of all such requests it had received.

LAW COURTS
RAILWAY TERROR
CRIMINALS

Annexure PCS19

annexure PCS19
This is the exhibit marked " " referred to in the
Affidavit of Phillip Strong
now produced and shown and sworn this

Before me,



JOANNE PEPLER

Magistrate

Copy of Social Media {Twitter} publication on 31 July 2019

 James Frost @jamesafrost · Jul 31

ICYMI Serial pest who bombarded ASIC with hundreds of requests signed
Pussy Galore and Goldfinger hijacks landmark fees-for-no-service case
against NAB @asicmedia @APRAinfo \$NAB #BankingRC
afr.com/companies/fina...

Law Courts
Railway Terrace
GEEBELONG

This is the exhibit marked "PCS20" referred to in the Affidavit of Phillip Sweeney now produced and shown and sworn this

Annexure PCS20 Before me,



JOANNE FARLEY
Magistrate's Court

Law Courts
Railway Terrace
GEELONG

APC 2020/0101 Complainant / The Australian Financial Review

Inbox

Complaints <complaints@presscouncil.org.au>

Mon, Aug 5,
12:25 PM (3
days ago)

to me

Dear Mr Sweeney,

Re: The Australian Financial Review article "Serial pest hijacks ASIC's case against NAB over fees scandal" (Print) 31 July 2019

Thank you for submitting a complaint to us received on 1 August 2019 in regards to the article above.

I note that you have mentioned an intention to take both civil and criminal action against James Frost. Please be aware that the Council's complaints process is intended to operate as an alternative to litigation and to be a prelude, an adjunct or a sequel to litigation. For further information about the interaction of legal proceedings with the Council's processes, please consult the Council's Fact Sheet: http://www.presscouncil.org.au/uploads/52321/ufiles/Fact_Sheet-Legal_proceedings_Final_30-06-15.pdf

Please advise if you have commenced, or may commence, legal proceedings against the publisher relating to matters falling within the area of the complaint.

If you have any questions or concerns, you are welcome to contact me by email or call me on 9261 1930 or 1800 025 712.

Kind regards,
Febe Magno | Complaints and Governance Officer
Australian Press Council Inc
Level 6, 53 Berry Street, North Sydney NSW 2060
PO Box 1014, North Sydney NSW 2059
T 02 9261 1930
T 1 800 025 712
F 02 9267 6826
www.presscouncil.org.au

Federal Court of Australia

District Registry: New South Wales

Number: NSD1654/2018

Applicant:

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Respondent:

MLC NOMINEES PTY LTD & ANOR

Interested Person:

PHILLIP CHARLES SWEENEY

AFFIDAVIT

(Order 14, rule 2) On 13 August, 2019, I

Phillip Charles Sweeney

Address: 37 Darian Road, Torquay, 3228

Occupation: Retired

say ~~on~~ *Affirmed*
oath-

- 1 I am a person who is now an "**Interested Person**" in these proceedings following the lodging of an affidavit dated 1 May 2019 which was filed on the 2 May 2019.
- 2 I am also a person who was a party to proceedings before the Honourable Justice Kenny (VID 323/2011) where I withdrew these proceedings after ASIC gave an undertaking to the Honourable Justice Kenny to the effect that ASIC would investigate allegations of maladministration of a Defined Benefit occupational pension scheme established by a Trust Deed made in South Australia on the 23 December 1913 if further evidence should come to light. The Attorney-General's Department of South Australia and the Parliament of Australia have been able to provide such "*additional evidence*".
- 3 I now have to defend myself from the defamatory and intimidatory statements made by James Frost in the **Australian Financial Review** as well as on **Social Media**.
- 4 As an Interested Person to these proceedings am entitled to protection from intimidation pursuant to Section 36A of the *Crimes Act 1914* (Cth) – Intimidation of witness etc.
- 5 I was a party to proceedings in the Administrative Appeals Tribunal in *Sweeney and Australian Information Commissioner and Australian Prudential Regulation Authority (Joined Party)* [2014] AATA 539.

On 6 August 2014 Deputy President J W Constance in the **Administrative Appeals Tribunal** stated:

[3] Over the past seven years Mr Sweeney has been seeking to expose what he **believes is fraudulent** conduct involving the **administration** of a trust **established** in 1913 for the benefit of the employees of a major Australian **company** and their **dependents**. He has been dogged in his pursuit of **documents** which may **establish** that such a fraud has been **committed**. It may **transpire** that Mr Sweeney **becomes well-known** as a **whistle-blower** who **persevered**, **notwithstanding** the many **obstacles** he had to **overcome**.

- 6 As a whistleblower, I am also entitled to protection pursuant to *Treasury Laws Amending (Enhancing Whistleblower Protections) Act 2019* which amended the *Corporations Act 2001* (and other enactments) as an 'eligible whistleblower', having previously made disclosures of misconduct by my former employer and the trustees of the employer-sponsored superannuation fund to ASIC, APRA and the Australian Federal Police.
- 7 Although the sponsoring employer is not a party to these proceedings, there is a contractual relationship between NULIS Nominees (Australia) Ltd {'Nulis'} and the sponsoring employer, since NULIS has to regularly provide an actuarial report to the sponsoring employer which recommends the required quantum of employer contributions to the fund associated with the superannuation 'trust' established by the Trust Deed made on the 23 December 1913 in the State of South Australia.
- 8 Section 1317 AD of the *Corporations Act 2001* now provides protection against detrimental conduct towards a whistleblower, which includes (e) 'harassment or intimidation of a person' and (h) 'damage to a person's reputation'.
- 9 I first contacted ASIC in March 2009 on the recommendation of APRA and this contact is confirmed in a letter dated 22 April 2009 signed by Greg Hackett – Misconduct & Breach Reporting – Stakeholder Services [Annexure PCS21]. This letter will be referred to in future affidavits.
- 10 Since early in 2007, I had been seeking access to the founding Trust Deed and all amending Deeds executed up until the time I accepted an offer of employment on 25 March 1985 and it was not until August 2009 that the purported trustee provided me with a copy of a purported 'Trust Deed' dated 26 August 1986 attached to a letter dated 21 August 2009 [Annexure PCS22]. This document did not exist when I accepted an offer of employment on 25 March 1985. This purported 'Trust Deed' will be referred to in future affidavits. The genuine founding Trust Deed was made on the 23 December 1913.
- 11 I received a letter dated 9 June 2011 [Annexure PCS23] in which the Fund Secretary and Complaints Manager, Margaret O'Halloran, made the following representation:

"The Trustee is not under any legal obligation pursuant to section 1017C or section 1017DA of the *Corporations Act 2001* to respond to your requests for information and documents pertaining to the Fund".

This letter will be referred to in future affidavits.


- 12 I was able to obtain copies of correspondence between ASIC and **The Treasury** by utilizing the *Freedom of Information Act 1982* (Cth) using my own name (and not a pseudonym). Warren Day from ASIC in a letter dated 25 October 2010 responded to a request for 'information' from Warwick Walpole from **The Treasury** [Exhibit PCS24]. This correspondence will be referred to in future affidavits.
- 13 I was able to obtain copies of correspondence between ASIC and former Senator John Williams by utilizing the *Freedom of Information Act 1982* (Cth) using my own name (and not a pseudonym). This correspondence will be referred to in future affidavits:
- Letter from Warren Day dated 6 August 2013 to Senator Williams [Annexure PCS25];
 - Letter from Belinda Taneski dated 17 January 2014 to Senator Williams [Annexure PCS26];




- 14 c. Letter from Gerard Fitzpatrick dated 11 February 2014 to Senator Williams [Annexure PCS27];
- d. Letter from Gerard Fitzpatrick dated 3 March 2014 to Senator Williams [Annexure PCS28] I attempted to warn the previous Chairman of the National Australia Bank (NAB), Michael Chaney AO, of the history of misconduct associated with this Defined Benefit superannuation fund over a year before a NAB corporate trustee become legally responsible on 20 January 2014 for paying the correct benefits to the correct beneficiaries of the Defined Benefit occupational pension scheme established by a Trust Deed made on the 23 December 1913 in the State of South Australia. A response dated 30 October 2012 was made by Mr Chaney [Annexure PCS29]. This Defined Benefit occupational pension scheme was closed to new members on 20 November 1997 soon after a member-elected Trustee Director commenced proceedings in the Supreme Court of Victoria claiming unfair dismissal and seeking protection pursuant section 68 of the *Superannuation Industry (Supervision) Act 1993 – Victimisation of trustees.*

List of Exhibits
{Refer below}

Affirmed by the deponent)
At Geelong)
in Victoria)
on 13 August 2019)
Before me:)



Signature of deponent


ARAVINDAN
TRUNAVUCKARASU
Registrar
Magistrates Court of Victoria

Law Courts
Railway Terrace
GEEELONG

Signature of witness

Magistrates Court of Victoria

List of Exhibits

Exhibit PCS24

Annexure PCS21



ASIC

Australian Securities & Investments Comm

Our Reference: 15476/09

22 April 2009

Mr Phillip Sweeney
12 Highland Way
HIGHTON VIC 3216

Level 24, 120 Collins Street
Melbourne VIC 3000
GPO Box 9827 Melbourne VIC 3001

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444

Dear Mr Sweeney

CCSL LIMITED (ACN 104 967 964)

I refer to your letter of 31 March 2009 originally addressed to Ms Belinda Gibson, ASIC Commissioner, concerning your complaint against CCSL Limited (ACN 104 967 964) as Trustee of the Foster's Group Superannuation Fund.

In your letter, you request ASIC's assistance to compel the Trustee to provide you with a copy of the Trust Deed that was in place on 25 March 1985. You state that you will then be able to obtain independent legal advice about your entitlements.

In order to assess your complaint accurately, I will need to contact the Trustee about your circumstances. Since ASIC is required to keep the names of complainants confidential, I need your consent to do so. I have enclosed a written consent form with this letter for you to sign and return to me via the address in the letterhead. Alternatively, you can provide your consent by email to greg.hackett@asic.gov.au.

It will also assist with my enquiries if you could provide ASIC with copies of any correspondence you have entered into with the Trustee in relation to this matter. I note from your letter that the Trustee has consented to you inspecting a copy of the current Trust Deed, and it will also assist me if you could confirm whether or not you have inspected the current Trust Deed.

If you have any questions in relation to this letter please contact on (03) 9280 3530.

Yours sincerely

Greg Hackett
Misconduct & Breach Reporting
Stakeholder Services

August 13, 2019

Annexure PCS22



21 August 2009

Mr Phillip Sweeney
12 Highland Way
HIGHTON VIC 3216

Dear Mr Sweeney

We refer to your request for the Trust Deed in place at the time you joined Foster's Group Superannuation Fund.

We have conducted an extensive search of the archives of previous administrators and lawyers to assist you. The earliest executed Trust Deed we have located is dated 26 August 1986 and it contains Rules of the Elders IXL Superannuation Fund dated 19 August 1985.

A copy is enclosed for your records.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Margaret O'Halloran".

Margaret O'Halloran
Fund Secretary

itee:
IL Limited
151 104 967 964
L 287084

Fund:
Foster's Group
Superannuation Fund
ABN 60 171 678 448

Administrator:
Plum Financial Services Limited
ABN 35 091 812 731
AFSL 243356

Level 9, 90 Collins Street
Melbourne Vic 3000
GPO Box 63
Melbourne Vic 3001

Telephone 1300 55 7586
Fax 1300 99 7586
Email service@plum.com.au
Web www.plum.com.au

A large, stylized handwritten signature in black ink, likely belonging to the sender of the letter.

August 13, 2019

Annexure PCS23



9 June 2011

Mr Phillip Sweeney
12 Highland Way
HIGHTON Victoria 3216

Dear Mr Sweeney

AusBev Superannuation Fund – Complaint

The Trustee of the AusBev Superannuation Fund (the *Fund*), formerly known as the Foster's Group Superannuation Fund, has considered your complaint dated 2 April 2011. Your complaint states that the Trustee has not provided information that you requested pursuant to section 1017C and section 1017DA of the Corporations Act 2001.

As advised to you by letter dated 13 November 2008, you ceased to be either a member or beneficiary of the Fund on 18 January 2007 when your benefit was paid to you. The Trustee considers that it has provided you with all information that is relevant to understanding how your Fund benefit was determined. The Trustee does not consider it to be in the best interests of the members and beneficiaries of the Fund to continue to expend time and Fund resources in responding to your continued requests for information and documents. The Trustee is not under any legal obligation pursuant to section 1017C or section 1017DA of the Corporations Act 2001 to respond to your requests for information and documents pertaining to the Fund.

Accordingly, the Trustee has determined that it will not provide the information requested. The Fund's internal complaints procedure has now been exhausted in relation to the subject matter of your complaint.

If you are not satisfied with the Trustee's decision, you can complain in writing to the Superannuation Complaints Tribunal (*SCT*). The SCT is an independent dispute resolution body which deals with certain types of complaints relating to the decisions of superannuation fund trustees. Contact details for the SCT are as follows:

Superannuation Complaints Tribunal
Locked Bag 3060
MELBOURNE VIC 3001
Telephone: 1300 884 114
Fax: 03 6635 5588
Email: info@sct.gov.au

Yours sincerely

Margaret O'Halloran
Fund Secretary and Complaints Manager

Page 1 of 1

Trustee CCSL Limited ABN 51 104 987 967 AFSL 287324	Fund AusBev Superannuation Fund ABN 50 171 673 448 18 July 2004	Administrator Plus Financial Services Limited ABN 36 001 812 731 AFSL 243109	Level 1, 50 Colton Street Melbourne VIC 3000 GPO Box 61 Melbourne VIC 3001	Telephone: 1 800 50 7586 Fax: 1 800 33 7586 Email: services@plm.com.au Web: www.plm.com.au
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August 13, 2019

Annexure PCS25

Document 4

Our Reference: CCU-130685



6 August 2013

Senator John Williams
Senator for New South Wales
144 Byron Street
INVERELL NSW 2360

Level 24, 120 Collins Street
Melbourne VIC 3000
GPO Box 9827 Melbourne VIC 3001

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444
ASIC website: www.asic.gov.au

Dear Senator Williams

Thank you for the email dated 18 July 2013, originally sent from Mr Gary Lamrock of your office to Mr Robert Rush, ASIC's Government Relations Manager, concerning an email you received from [REDACTED]. We apologise for the delay in responding to you.

We note that [REDACTED] has raised concerns about obtaining access to a copy of a trust deed from 1913 that [REDACTED] believes is relevant to [REDACTED] interest in a superannuation fund.

Thank you for raising this matter with ASIC. Unfortunately the information contained in [REDACTED] email is not sufficient for us to assess [REDACTED] concerns and determine whether they may suggest a breach of a law we administer. We will contact [REDACTED] directly to gather further information in order to assess [REDACTED] concerns.

We note that ASIC may be unable to take further action in relation to this matter if [REDACTED] is not considered a 'concerned person' under the *Corporations Act 2001* for the purposes of the superannuation fund, and if the trust deed is not relevant to determining [REDACTED] actual interest in the superannuation fund.

We will discuss these matters with [REDACTED] and also ensure [REDACTED] is aware of [REDACTED] rights to pursue disputes about his superannuation entitlements in the Superannuation Complaints Tribunal.

Should you wish to discuss this matter further, please call me on 03 9280 3502.

Yours sincerely

Warren Day
Senior Executive Leader
Stakeholder Services

August 13, 2019

7

Annexure PCS26

Document 8

Our Reference: CCU-140006



17 January 2014

Level 24, 120 Collins Street
Melbourne VIC 3001
GPO Box 9827 Melbourne VIC 3001

Senator John Williams
Senator for New South Wales
144 Byron Street
INVERELL NSW 2360

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444
ASIC website: www.asic.gov.au

Dear Senator Williams

Correspondence from [REDACTED]

Thank you for the email dated 6 January 2014 from your office to Mr Robert Rush, Manager – Government Relations of the Australian Securities and Investments Commission (ASIC). The email forwarded an email from [REDACTED] dated 12 December 2013. Mr Warren Day, the Stakeholder Services Senior Executive Leader, has asked me to respond to you as Mr Day is currently on leave.

Background

ASIC has had extensive dealings with [REDACTED] since [REDACTED] first raised concerns with us in March 2009. [REDACTED] concerns relate to:

- [REDACTED] payout from [REDACTED] defined benefit superannuation fund, now called the AusBev Superannuation Fund (R1004830) (the Fund), which [REDACTED] believes was lower than [REDACTED] was entitled,
- the conduct of the Fund's trustee, CCSL Limited (ACN 104 967 964) (AFSL 287084) (the Trustee), and
- the conduct of [REDACTED] former employer, now called Foster's Group Pty Ltd (ACN 007 620 886).

[REDACTED] concerns

More recently, [REDACTED] has contacted ASIC with concerns about [REDACTED] own dealings with the Trustee about the Fund. [REDACTED] claims that [REDACTED] is a beneficiary of the Fund due to [REDACTED] previous membership of the Fund. [REDACTED] claims that [REDACTED] is entitled to a survivorship pension from the Fund.

[REDACTED] has requested superannuation fund documents, namely old trust deeds, from the Trustee that in her view would confirm [REDACTED] entitlement. We understand that the Trustee does not agree that [REDACTED] is a beneficiary of the Fund, and [REDACTED] provided to ASIC a copy of a letter from the Trustee declining to provide Fund documents. [REDACTED] has asked ASIC to compel the Trustee to provide [REDACTED] with a copy of these documents for the Fund.

August 13, 2019

8

ASIC consideration

ASIC assessed [REDACTED] concerns and considered whether [REDACTED] was a 'concerned person' for the purposes of the legal provisions that would likely oblige the Trustee to provide Fund documents to [REDACTED]. As you may know, to be a 'concerned person' and be entitled to receive certain information relating to the Fund, [REDACTED] must be a current member of the Fund, or a member within the last 12 months, or a beneficiary of the Fund.

Based on the information available to ASIC, we determined that [REDACTED] is not a beneficiary of the Fund and therefore does not meet the 'concerned person' definition. ASIC's position is that, as [REDACTED] is not a concerned person, there has not been a breach of the law by the Trustee declining to provide Fund documents.

We communicated our position to [REDACTED] on 13 November 2013 and 10 December 2013 (copies enclosed). We explained that ASIC's position was that a beneficiary, for the purposes of the 'concerned person' definition, is generally a person with an entitlement to receive a payout from a fund. We also provided an example of where a person was likely to be considered a beneficiary. In our view, this includes a person whose entitlement arises from their spouse being a member of the relevant fund and the person has a claim on their spouse's superannuation, for example as a result of rights under a property settlement relating to a family law dispute.

In this regard, we note that [REDACTED] is no longer a member of the Fund (since having received his payout). We also note that, from the information available to ASIC, [REDACTED] was not a member of the Fund when the old trust deeds were in force, and we would expect any rights under those trust deeds would not be available to [REDACTED], and therefore also not available to [REDACTED].

We understand that [REDACTED] has sought further clarification as to how ASIC arrived at this position. ASIC's position is set out in our correspondence to [REDACTED] and we are unable to comment further on this matter. To do so may inappropriately disclose details of our internal specialist and legal advice and operational methods.

ASIC position

ASIC has communicated our position to [REDACTED]. We have advised [REDACTED] that we do not intend to take any further action and provided [REDACTED] with the details of the Commonwealth Ombudsman. We have encouraged [REDACTED] to seek [REDACTED] own legal advice about pursuing any private rights that may be available to [REDACTED].

From a recent letter, we understand that [REDACTED] appears to have since obtained [REDACTED] own legal advice and disputes our position. [REDACTED] is able to provide a copy of this advice to ASIC should [REDACTED] wish. We also note that ASIC's decision not to take further action does not preclude [REDACTED] from pursuing [REDACTED] own rights. If [REDACTED] has legal advice concluding that [REDACTED] is a beneficiary, [REDACTED] should seek further advice about how to enforce any rights [REDACTED] may have as a beneficiary. As you may appreciate, ASIC does not generally act for individuals to enforce their own legal rights, unless we consider this to be in the public interest.

Unfortunately, there is nothing further that we can do to assist [REDACTED] in circumstances where there has not been a breach of the law ASIC administers.

Senate Economics References Committee Inquiry into the performance of ASIC

As you may know, [REDACTED] has lodged a submission to the Senate Economics References Committee Inquiry into the performance of ASIC (Submission 277). This submission also discusses issues surrounding the disclosure of Fund documents.

Please contact Greg Hackett on 03 9280 3530 or greg.hackett@asic.gov.au if you have any questions in relation to this letter.

Yours sincerely



Belinda Taneski
Senior Manager
Misconduct & Breach Reporting

Annexure PCS27

Document 14



Our Reference: CCU-140060

11 February 2014

Senator John Williams
Senator for New South Wales
144 Byron Street,
INVERELL NSW 2360

Level 5, 100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
DX 653 Sydney

Telephone: (02) 9911 2000
Facsimile: (02) 9911 2414
ASIC website: www.asic.gov.au

Dear Senator,

CCSL Limited (ACN 104 967 964) (AFSL 287084)

Thank you for your email of 28 January 2014 to Mr Robert Rush, Manager – Government Relations at the Australian Securities and Investments Commission (ASIC). The email was sent on behalf of your constituent [REDACTED] concerning the AusBev Superannuation Fund (Fund) and access to trust deeds from its trustee, CCSL Limited (Trustee). Mr Rush has asked me to respond to you.

In particular, you have sought information regarding:

- what are the Trustee's obligations in providing members with access to trust deeds;
- whether the Trustee can impose a fee or charge for providing this service; and
- what action ASIC will take in respect of this matter.

Background

As you would be aware, ASIC has previously engaged with [REDACTED] in relation to [REDACTED] membership of the Fund, and attempts to access trust deeds and associated documents. As noted in the letter sent to [REDACTED] on 3 October 2013, his concerns were referred to the Investment Managers and Superannuation (IMS) team for further consideration. ASIC has received other similar complaints where members, or former members, have requested a variety of different documents from the Trustee.

Each complaint is different and the entitlement to receive information under the request has to be assessed having regard to the Trustee's obligations under the *Corporations Act 2001* (the Act). We have been engaging with the Trustee in relation to these separate matters for a number of years.

With regard to [REDACTED] we discussed [REDACTED] issues with the Trustee and reminded the Trustee of their obligations under the Act.

Access to trust deeds

As you might appreciate, ASIC does not provide legal advice and we are therefore limited in what advice or guidance we will provide in relation to specific matters.

August 13, 2019

Section 1017C of the Act requires trustees to provide a 'concerned person' - as defined in subsection 1017C(9) of the Act - with the information that they reasonably require for the purposes of understanding any benefit entitlements that they may have under the relevant superannuation product.

We understand that [REDACTED] is a 'concerned person' given [REDACTED] current membership of the Fund, and as such does have certain rights under the Act with respect to accessing relevant information.

However, it is arguable as to whether trust deeds and other such documents that were in effect before the date on which [REDACTED] joined the Fund are reasonably required to understand a person's benefit entitlements, and are therefore potentially outside the scope of section 1017C of the Act. It is open to the Trustee to take the view that [REDACTED] is not entitled to these documents. However, we note that the Trustee, in any event, has previously provided [REDACTED] with the opportunity to inspect the relevant documents at no charge. We understand from our discussions with the Trustee that this offer was extended to any current member of the Fund who wished to view the relevant documents.

Charges to access trust deeds

Where trustees are required to give information under section 1017C, they are entitled, under certain circumstances, to impose charges or fees for access to information reasonably required to understand a person's benefit entitlements. These charges must not exceed the reasonable cost of giving this information, and can include costs associated with searching for, obtaining and collating the information. For example, this may apply if [REDACTED] wanted a copy of the current Trust Deed for the Fund, or a copy of the Trust Deed that was in place when [REDACTED] joined.

However, where a trustee is compelled to provide access to such information, the Act provides that it is sufficient for the trustee to make the information available for inspection at a suitable place - with facilities for the person to inspect and photocopy any relevant documents - and during normal business hours.

Providing access to documents is likely to incur costs for a trustee and these costs may be passed on to the existing members - for example, as an increase in administration fees.

We note that from 1 July 2014, reforms in superannuation will mean that all trustees have to make publicly available on a fund website a copy of the fund's current trust deed.

ASIC position

As previously noted, this matter has been given considerable attention within ASIC. In the course of undertaking our enquiries, we have engaged with the Trustee and ensured that they understand their responsibilities under the Act, and more specifically, in relation to section 1017C of the Act.

In making these enquiries, the Trustee has advised that a successor fund transfer - essentially a change in trustee for the Fund - has occurred, with an effective date of 20 January 2014. Plum Financial Services Limited ACN 081 812 731 (PFSL) became the new trustee of the Fund, and we suggest that [REDACTED] contact PFSL should [REDACTED] wish to pursue this matter further. We have contacted PFSL and reminded them of their obligations under section 1017C of the Act in anticipation that [REDACTED] may contact PFSL in the future.

We continue to take a proactive approach to monitoring trustees and superannuation funds to ensure that they are operating fairly, honestly and efficiently, and in accordance with the requirements of the law. However, in light of the fact that there are no apparent breaches of the law which ASIC administers, at this stage we do not propose to take any further action in relation to this matter. This of course is subject to any further information that may become available.

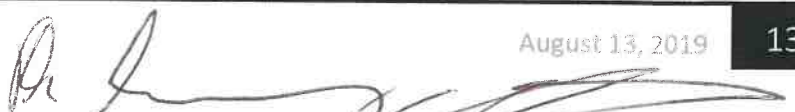
We note that ASIC's decision does not preclude [REDACTED] from pursuing any private rights that may be available to [REDACTED]. As you may appreciate, ASIC does not generally act for individuals to enforce their own legal rights, unless we consider this to be in the public interest.

I hope the above information is of some assistance. If you have any queries in relation to this matter, please contact Ms Alex Purvis, Senior Manager, Investment Managers and Superannuation on (03) 6235 6828.

Yours faithfully,



Gerard Fitzpatrick
Senior Executive Leader
Investment Managers and Superannuation



Annexure PCS28

Document 18



ASIC
Australian Securities & Investments Commission

3 March 2014

Senator John Williams
Senator for New South Wales
144 Byron Street,
INVERELL NSW 2360

Dear Senator

CCSL Limited (ACN 104 967 964) (AFSL 287084)

Thank you for your email of 17 February 2014.

The email outlined some further queries from [REDACTED] concerning the AusBev Superannuation Fund (Fund) and access to trust deeds from its then trustee, CCSL Limited (the Previous Trustee), following ASIC's letter dated 11 February 2014.

We understand that [REDACTED] request is for copies of earlier trust deeds in relation to the Fund. In particular, you have sought further information for [REDACTED] and [REDACTED] ability to access these trust deeds.

The correspondence that [REDACTED] has received from CCSL is correct; there was a successor fund transfer of members of the Fund into a sub-plan of the Plum Superannuation Fund. PFS Nominees Pty Ltd (PFS Nominees) is the trustee of the Plum Superannuation Fund, and not Plum Financial Services Limited (PFSL) as indicated in our letter. PFSL is in fact the administrator for the Fund. Queries in relation to the Fund are likely to be handled by PFSL on behalf of PFS Nominees.

It may assist to provide further explanation about the ability for members of superannuation funds to access certain fund documents under two limbs in section 1017C of the *Corporations Act 2001* (the Act).

Access to fund documents under section 1017C

In our letter of 11 February 2014, we outlined that subsection 1017C(2) requires a trustee to provide a concerned person with the information that they reasonably require for the purpose of understanding any benefit entitlements that they may have under the relevant superannuation product.

In addition, subsection 1017C(5) and associated Corporations Regulation 7.9.45 and Schedule 10A, Part 11.1 would require a trustee to provide the member with specifically prescribed documents, including the fund's governing rules.

It is correct that the governing rules can be made of multiple documents. As subsection 1017C(5) and associated regulations refer to *the* governing rules, this indicates that only the current compilation of the rules can be accessed under these particular provisions. Again, the current compilation is unlikely to include the earlier trust deeds as specifically requested by [REDACTED]. This is because any changes to

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the governing rules from these trust deeds are likely to have been incorporated into the governing rules over time.

We understand that the Previous Trustee also took the view that access to copies of earlier trust deeds was not available under subsection 1017C(2). For the reasoning set out above, access to copies of earlier trust deeds is unlikely to be available under subsection 1017C(5) and associated regulations.

In any event, we note that a trustee may comply with the access requirements in section 1017C, by making the documents available for inspection at a suitable place with facilities for the person to photocopy. Even assuming that the Previous Trustee had to provide the previous trust deeds under any of the limbs of section 1017C, we understand that the Previous Trustee offered this ability to inspect to [REDACTED].

ASIC consideration

ASIC does not have a formal directions power to direct a trustee to provide information to a person under this section. Directions powers do exist in other parts of the Act (such as section 798J to suspend dealings in a financial product) but there is no directions power relevant to section 1017C of the Act.

ASIC can take other action if we consider there has been a breach of the provisions, including licensing action or prosecution, depending on the circumstances of the case. However, in light of the fact that there are no apparent breaches of the law which ASIC administers, at this stage we do not propose to take any further action in relation to this matter.

Future steps

ASIC is in discussions with PFS Nominees about the way these types of queries should be handled as we can appreciate that this matter is frustrating for [REDACTED].

We recommend that [REDACTED] get in touch with PFS Nominees through their administrator, PFSL, on 1300 55 7586. If [REDACTED] has concerns with the manner in which [REDACTED] request is treated by PFS Nominees, [REDACTED] can contact us to outline [REDACTED] concerns, or contact the Superannuation Complaints Tribunal. At this stage, PFS Nominees has not denied any request by [REDACTED].

We note that ASIC's decision not to take any further action at this stage does not preclude [REDACTED] from pursuing any private rights that may be available to [REDACTED]. As you may appreciate, ASIC does not generally act for individuals to enforce their own legal rights, unless we consider this to be in the public interest.

I hope the above information is of some assistance. If you have any queries in relation to this matter, please contact Ms Alex Purvis, Senior Manager, Investment Managers and Superannuation on (03) 6235 6828.

Yours sincerely



Gerard Fitzpatrick
Senior Executive Leader
Investment Managers and Superannuation

Annexure PCS29



Michael Chaney AO
Chairman

300 Bourke Street
1003350
Docklands
Victoria 3008
Australia

Telephone:
(61 5) 8634 3831
Facsimile:
(61) 1300 099 249

30 October 2012

Mr Phillip Sweeney
Australian Guardians Pty Ltd
12 Highland Way
HIGHTON VIC 3216

Dear Mr Sweeney

I refer to the letter you sent to me dated 17 October 2012, and to the numerous letters sent previously to myself and a number of other directors of National Australia Bank.

Mr Stephen Tadjman, General Counsel NAB Wealth, has responded to correspondence from you on both 17 September 2012 and 16 October 2012.

Neither I, nor any other representative of National Australia Bank, intends to correspond with you any further on this matter.

Yours sincerely

Michael Chaney
Chairman



National Australia Bank Limited (NAB) is a member of the Commonwealth Bank Group.

August 13, 2019

Exhibit Certificate: PCS24

Federal Court of Australia

District Registry: New South Wales

Number: NSD1654/2018

Applicant:

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Respondent:

MLC NOMINEES PTY LTD & ANOR

Interested Person:

PHILLIP CHARLES SWEENEY

Affidavit of: Phillip Charles Sweeney

Address: 37 Darian Road, Torquay, 3228

Occupation: Retired

Date: 13 August 2019

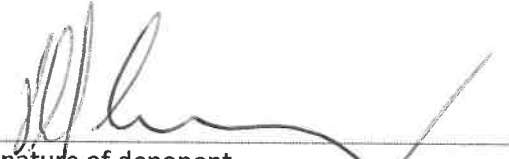

Affirmed by the deponent)

At Geelong)

in Victoria)

on 13/8/19)

Before me:)


Signature of deponent

ARAVINDAN
TRUNAVUCKARASU
Registrar
Magistrates Court of Victoria
Law Courts
Railway Terrace
GEE LONG

Signature of witness



Our Reference: CCJ-10/0386
Your Reference: 85189

25 October 2010

Mr Warwick Walpole
The Treasury
Langton Crescent
PARKES ACT 2600



ASIC

Australian Securities & Investments Commission

Level 24, 120 Collins Street
Melbourne VIC 3000
GPO Box 9827 Melbourne VIC 3001

Telephone: 03 9290 3200
Facsimile: 03 9290 3444

Dear Mr Walpole,

Thank you for your letter dated 19 October 2010 addressed to Ms Ruki Weerasinghe, Secretariat Officer of the Australian Securities and Investments Commission (ASIC), in relation to a representation on behalf of Mr Phillip Sweeney, concerning the obligations of the Superannuation Complaints Tribunal under the SRC Act.

Mr Sweeney first raised concerns in relation to the actions of both Foster's Group Limited (**Foster's**) and Corporate Combined Superannuation Limited (**CCSL**) in relation to calculation of his superannuation benefit entitlement in March 2009, and sought ASIC's intervention in that regard. We are aware that Mr Sweeney is now writing to the Minister and other Members of Parliament. We have attached a confidential briefing note in relation to ASIC's dealings with Mr Sweeney, and our position in relation to his complaint. We have also enclosed our correspondence with Mr Sweeney for your reference. At the request of ASIC's Commissioners, we will be forwarding the brief to the Minister's office as well.

ASIC made comprehensive enquiries in relation to the concerns raised by Mr Sweeney, including with Foster's, CCSL and the Australian Prudential Regulation Authority (APRA). Mr Sweeney's complaint received detailed consideration by ASIC, including by our Misconduct and Breach Reporting group, the stakeholder team responsible for Superannuation, and the Senior Executive Leader responsible for Stakeholder Services.

By letter dated 2 July 2010, ASIC informed Mr Sweeney that it did not intend to take further action in relation to his complaint, that it considered that it has given due consideration to the issues he had raised in relation to Foster's Group Limited, and that its enquiries in this regard had concluded. However, Mr Sweeney continues to send correspondence to ASIC in relation to his complaint.

ASIC assesses Mr Sweeney's correspondence as and when it arrives. Thus far, Mr Sweeney has not submitted **any** new information that would cause ASIC to revisit its previously stated position. Much of Mr Sweeney's correspondence relates to matters outside ASIC's jurisdiction, and ASIC is not able to provide any further **assistance** to

Mr Sweeney. However, if Mr Sweeney continues to feel that his rights have been offended, it remains open to him to approach the courts to seek redress there, which we have recommended he do.

If you have any questions in relation to this letter please contact Joanna Greco on (03) 9280 3239.

Yours sincerely



Warren Day
Senior Executive Leader
Stakeholder Services

Confidential briefing note in relation to Mr Phillip Sweeney and his complaints to ASIC in relation to Foster's Group Limited and Corporate Combined Superannuation Limited.

Mr Sweeney's complaint in relation to obtaining the Trust Deed of his former superannuation fund

Mr Phillip Sweeney was employed by Carlton and United Breweries Limited (**CUB**) in 1985, and became a member of the Elders IXL Superannuation Fund shortly thereafter. As a result of the Foster's Group Limited (**Foster's**) acquiring the CUB business, Mr **Sweeney** was transferred into the Foster's Group Superannuation Fund (**the Fund**).

Mr Sweeney requested ASIC's assistance on 31 March 2001 to compel Corporate Combined Superannuation Limited (**CCSL**), which acts as the Trustee of the Fund, to provide him with a copy of the Trust Deed that was in force when he joined the fund on 25 March 1985.

Mr Sweeney was seeking a copy of the Trust Deed to assist in his understanding the calculation of salary for his defined benefit superannuation entitlement. Mr Sweeney considered that his salary has been undervalued as it did not reflect his total taxable income in his final three years of employment. He also asserted that the Trustee had admitted to using 'cash salary' to calculate his entitlements, as opposed to 'the yearly rate of remuneration', which was the term used in the Trust Deed in his possession.

Mr Sweeney provided a letter of engagement with CUB dated 26 March 1985, which indicated that Mr Sweeney was eligible to join the Elders IXL Superannuation Fund after a qualifying period of six months, which meant that Mr Sweeney joined the fund as it was constituted on or around 25 September 1985.

Upon receipt of Mr Sweeney's written consent, an ASIC officer made contact with the Trustee in relation to his request, who confirmed that a copy of the current trust deed was available for Mr Sweeney to inspect at the Trustee's office. That representative also confirmed that the Trust deed and certain amendments were consolidated and redrafted into a 'plain English' style with effect from 31 March 2006, and that the Trustee may have difficulty accessing all of the older documents related to previous versions of the Trust deed, as these documents were generally the responsibility of the former Trustee. Mr Sweeney was advised of this by letter dated 12 May 2009.

Mr Sweeney subsequently contacted ASIC noting that the 12 May 2009 letter referred only to the current trust deed, and again seeking ASIC's assistance to access the deed current at the time at which he was employed. Following his request, ASIC made further contact with CCSL about the matter. CCSL subsequently advised ASIC's Misconduct and Breach Reporting area (**M&BR**) that despite an exhaustive search, it had not been able to locate an executed copy of the Trust Deed that was in force on 25 March 1985. However CCSL informed ASIC that it uncovered a Trust deed dated 26 August 1986 which contained the rules of the Elders IXL Superannuation Fund dated 19 August 1985. The information before ASIC indicated that these were the rules relevant to Mr Sweeney's request, and CCSL advised ASIC that it had provided Mr Sweeney a copy of that Trust Deed.

ASIC's position in relation to difficulties of the Fund in supplying Mr Sweeney with the Trust Deed

Section 1017C of the *Corporations Act 2001* (**the Act**) requires trustees to give members or former members information that the person reasonably requires to understand any benefit entitlements that the person may have or to understand the main features of the fund. ASIC formed the view that the trust deed was relevant for Mr Sweeney to understand his entitlement, and whether or not it dealt with the calculation of base salary for defined benefit purposes.

Given difficulties and length of time it took CCSL to locate the Trust Deed, ASIC had some concerns that the Trustee in this case was unable satisfy its regulatory obligations with respect to the provision of information to members. On this basis the matter was referred to

ASIC's (then) Superannuation Funds stakeholder team, to conduct further enquiries and consider compliance action. However, in the absence of:

- evidence of systemic misconduct on the part of the Trustee; or
- evidence that the difficulties incurred were having any further effect other than on Mr Sweeney's personal circumstances; and
- given the Trustee was able to supply Mr Sweeney with documents that appeared to be relevant to his circumstances,

the team accepted the referral for intelligence purposes only, and instructed that M&BR liaise with the complainant and refer him to the Superannuation Complaints Tribunal (SCT) for outstanding issues.

At that time ASIC considered that there was insufficient evidence to indicate misconduct on the part of Foster's or the Trustee in relation to the calculation of his entitlements, and Mr Sweeney was sent a letter to that effect.

Further, in subsequent discussions between Mr Sweeney and ASIC, Mr Sweeney has confirmed that the deed is not the central issue of concern, but rather the salary upon which his superannuation benefit has been calculated.

Mr Sweeney's complaint in relation to the calculation of his benefit entitlement

Following receipt of the trust deed from the Trustee, Mr Sweeney again alleged misconduct on the part of both Foster's and the Trustee in relation to calculation of his superannuation benefit entitlement and sought ASIC's intervention.

ASIC made further enquiries, including of Foster's, to further assess Mr Sweeney's complaint. Those enquiries revealed that in 1985, Carlton United Breweries adopted a Total Remuneration Policy and invited management staff to participate. Under the policy, employees received a total remuneration package that allowed them to choose, within certain parameters, the mix of benefits (including packaged items such as motor vehicle expenses) and cash that they received. Within the package, the superannuation component was set as 18% x Superannuation Salary. Superannuation Salary was defined in the relevant policy document of Foster's as gross cash plus voluntary before-tax superannuation contributions.

Foster's informed ASIC that under the package, members were able to adopt a strategy of minimising their superannuation payments by reducing their gross cash amount by maximising packaging options like cars. Members were then able to opt out of such packaging options, and generally would do so three years prior to ending employment; 3 years being the period over which Final Average Salary for Defined Benefit purposes was calculated.

It is understood that Mr Sweeney participated in that policy from August 1992, and that in the years prior to his redundancy, he elected to package car and car parking as part of his Total Remuneration Package.

Calculation of 'final average salary'

Mr Sweeney was made redundant on 16 October 2006. The applicable trust Deed governing his benefit entitlement at the time was dated 31 March 2006 (**Trust Deed**). Rule 2.3 of the Trust Deed provided for Resignation benefits (Rule 2.3.6), the resignation benefit being the Member's Reserve. Rule 2.1.3 defines the Member's Reserve as follows:

Member's Reserve in respect of a member means the product of (i)(ii) and (iii), where:

- (i) Is the Member's Benefit Multiple;
- (ii) Is the Member's Final Average Salary; and
- (iii) Is the factor set out in Table 1.

In his correspondence Mr Sweeney disputed amounts under item (ii).

Rule 2.2.3 defines Final Average Salary as follows:

"Final average salary in respect of a member means the Member's average salary during the three years of the Member's service immediately prior to the Member's ceasing to be an employee."

Rule 1.1.1 defines Salary as follows:

"Salary means in relation to a Member the yearly rate of remuneration advised by the Employer for the purpose of determining Benefit payments and Contributions under the rules . . ."

Remuneration is not defined in the trust Deed, rather "Salary" is as advised by the Employer. The Trustee had no discretion to substitute a different amount without the approval of Employer. Equally, contrary to Mr Sweeney's assertion, there is no legislative imperative that the amount advised to the Trustee as salary should be the same as amounts required to be advised as wages on group certificates to the Australian Tax Office (ATO). Accordingly, the Trustee calculated Mr Sweeney's salary in accordance with those rules and the salary advised by the Foster's Group, and there is nothing to suggest that the Trustee acted **improperly** or failed to fulfil its duties as Trustee in this regard.

Short term incentive bonus and its impact on superannuation salary

In his correspondence, Mr Sweeney raised concerns relating to discrepancies between group certificates and the amount advised to the Fund by Foster's as his superannuation salary. ASIC was been advised by the Foster's Group that the discrepancy in these amounts reflects the bonus paid under the Short Term Incentive Program (STIP). Foster's have informed ASIC that STIP has never been included in the definition of salary used for the purposes of calculating benefits for defined benefit members. On this basis, there is nothing to suggest any misconduct on behalf of Foster's in relation to superannuation amounts advised to the Trustee.

The total remuneration policy adopted by Fosters

The concerns that Mr Sweeney has raised regarding the terms of his employment and the effect of the Total Remuneration Policy adopted by CUB on those terms are issues of a private contractual nature, and, absent any evidence of misconduct, ASIC formed the view that it had no jurisdiction to intervene in this regard.

ASIC's no further action position and issues raised in recent correspondence

Given the above, ASIC considers that it has given due **consideration** to the issues Mr Sweeney has raised in relation to Foster's, and that our enquiries in this regard have concluded. Mr Sweeney was informed of this by letter dated 2 July 2010 from Warren Day, Senior **Executive** Leader, Stakeholder Services. That letter also informed Mr Sweeney that any further correspondence would be considered and assessed but may not be responded to, and referred him to the Commonwealth Ombudsman if he remained dissatisfied with ASIC's decision. However the letter also contained Mr Day's contact details if Mr Sweeney wished to contact him to discuss its contents.

Following receipt of the letter Mr Sweeney has continued corresponding with ASIC, raising the following issues relevant to our legislative responsibilities:

Superannuation contribution calculation

In his continuing correspondence Mr Sweeney has asserted that the applicable contribution rate for his superannuation was 0%, and in that regard the Trustee and Foster's have provided misinformation to ASIC and the SCT. However, the superannuation value of 18% did not refer to contributions that members made from salary, but rather, was an amount determined by the Fund's actuary as representing the value of the superannuation defined benefit provided to staff each year. According to Foster's, it reflected the value of benefits accruing at 17.75%, and allowance for contribution tax, administration and insurance expenses. While Mr Sweeney was able to elect the values for the other components of his

remuneration, he had no such power in relation to the superannuation component, as it was automatically calculated at 18% of his elected cash proportion plus any voluntary contributions on his part.

It appears that this misunderstanding on the part of Mr Sweeney has led him to assert that accounting information submitted to the SOT and ASIC by the Trustee are incorrect and unaudited. However there is no basis for this allegation in Sweeney's correspondence.

Access to audited trust accounts of the Fund

Mr Sweeney has also subsequently asserted that he has a right to be provided with copies of the audited trust accounts of the Trust under section 1017C of the Act. However although section 1017C requires that trustees to give members or former members information that the person reasonably requires to understand any benefit entitlements that the person may have or to understand the main features of the fund, ASIC considers that this right does not extend to obtaining the audited trust accounts, and that the Fund has complied with its reporting requirements under the Act.

Mr Sweeney further asserts that he entitled to these accounts by virtue of statements made in the product disclosure statement (PDS) of the Fund. However that PDS states that members are entitled to "certain accounts and other documents by lodging a written request with the Trustee". ASIC considers that this statement does not oblige them to provide a copy of the audited trust accounts to members on request.