



Our Reference: 36866/09

10 November 2009

Mr Phillip Sweeney  
12 Highland Way  
HIGHTON VIC 3216

Dear Mr Sweeney

**CCSL LIMITED (ACN 104 967 964)**

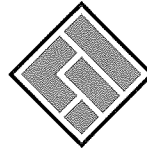
Thank you for your recent letters to ASIC providing further information about your dispute with CCSL Limited (ACN 104 967 964) (CCSL). ASIC's enquiries into this matter have taken longer than expected, and I apologise for the delay in responding to you.

You have requested ASIC's assistance to compel CCSL, which acts as the trustee of your former superannuation fund, the Elders IXL Superannuation Fund and later the Foster's Superannuation Fund, to provide you with a copy of the Trust Deed that was in force when you commenced employment with Carlton and United Breweries Limited, later Foster's Group Limited, on 25 March 1985.

You have provided ASIC with your letter of engagement with Carlton and United Breweries Limited dated 25 March 1985. This letter states that you will be eligible to join the Elders IXL Superannuation Fund after a qualifying period of six months. This would mean that you joined the Fund as it was constituted on or around 25 September 1985.

As you are aware, following your initial request for assistance, ASIC made contact with CCSL about this matter. CCSL has advised ASIC that it initiated a search of its records and the archives of the previous trustee and has uncovered a copy of an executed Trust Deed dated 26 August 1986 which contains the rules of the Elders IXL Superannuation Fund dated 19 August 1985. The information before ASIC indicates that these are the rules that are relevant to your request, and CCSL has advised that it has provided you with a copy of the Trust Deed.

I understand that you are seeking a copy of the Trust Deed to assist with understanding the calculation of salary for your defined benefit superannuation entitlement. You consider that your salary has been undervalued as it does not reflect your total remuneration or taxable income in the final three years of your employment. You also state that the Trustee has admitted to using 'cash salary' to calculate your entitlements, as opposed to 'the yearly rate of remuneration', which is the term used in the Trust Deed in your possession.



**ASIC**

Australian Securities & Investments Commission

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

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

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ASIC has assessed your complaint about CCSL's conduct and considers that it relates primarily to a dispute about your personal circumstances, for which you are able to pursue your own private action. ASIC must consider whether to take regulatory action in relation to a particular case would be in the public interest, and ASIC does not generally take action on behalf of individual complainants or to recover compensation for individuals. For these reasons, ASIC has determined not to take any further action against CCSL in relation to your specific concerns at this time.

ASIC is unable to provide you with legal advice, and I would encourage you to continue to seek your own independent legal advice about remedies that may be available to you to resolve your dispute.

You have advised ASIC that you previously raised this matter with the Superannuation Complaints Tribunal (SCT), which determined it did not have jurisdiction to consider your complaint. The SCT cannot consider a complaint that 'relates to the management of a fund as a whole', which would include complaints about the definition of income which applied to all members of the fund. However, a personal dispute about how a definition of income is *applied* to a member's personal entitlement under a defined benefit scheme *may* be considered by the SCT. You may, therefore, wish to raise this matter again with the SCT again, ensuring that you describe the matter in *these terms*. The SCT can also seek information from superannuation trustees.

#### **ASIC's responsibilities in relation to superannuation**

In your letters, you have also requested information on the division of responsibilities between ASIC and the Australian Prudential Regulatory Authority (APRA) in relation to superannuation.

Disclosure by superannuation funds and fund trustees is the primary area of ASIC jurisdiction in relation to superannuation, in addition to the enforcement of the consumer protections for super fund members. In effect, this means ASIC administers the regulatory requirements for superannuation funds and fund trustees to the extent that they relate to disclosure. ASIC is also responsible for a fund trustee's compliance with determinations of the SCT and duty to establish complaint management arrangements.

Beyond these functions, APRA is generally responsible for the oversight of a fund trustee's operations and obligations, including its requirements to retain certain relevant documents. I note that you have also raised a complaint with APRA about this matter.

ASIC is aware of your complaint against CCSL and intends to conduct further confidential consultations about its operations in a broader context. The information you have provided has been included on ASIC's confidential internal database and will be available for consideration as part of this process.

Please be aware that there are restrictions upon when ASIC may make public comments in relation to its operational activities. These restrictions are set out in ASIC's *Regulatory Guide 47 'Public Comment'*, and protect the confidentiality of information reported to ASIC and the integrity of ASIC's investigation and enforcement activities. For these reasons, I am unable to comment on what, if any, action ASIC may take in the future.

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**Commonwealth Ombudsman**

If you have concerns about ASIC's management of your matter, you can lodge a complaint with the Commonwealth Ombudsman. The Commonwealth Ombudsman cannot review or re-determine ASIC's decision, but does have the power to investigate misconduct, or review the manner in which a decision has been made to ensure that it was done fairly and in accordance with the law.

The contact details for the Commonwealth Ombudsman are as follows:

Commonwealth Ombudsman  
PO Box K825  
Haymarket NSW 1240  
  
Telephone: 1300 362 072  
Website: [www.comb.gov.au](http://www.comb.gov.au)

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

Yours sincerely



**Greg Hackett**  
**Misconduct & Breach Reporting**  
**Stakeholder Services**