

Our ref: FOI 2014-50049

7 January 2015

Mr Phillip Sweeney
12 Highland Way
HIGHTON VIC 3216

Dear Mr Sweeney

I acknowledge receipt of your email dated 21 December 2014 in which you requested a copy of the following document:

'...a document which includes on its cover page the words
"Australia's Worst White-Collar Crime How the
Commonwealth Ombudsman can prove the Fraud that has
been covered-up by other Commonwealth Agencies"...'

A search of the records held in this office has located the document you seek.

As you sent the requested document to this office by email on 10 December 2014, I have decided to provide a copy of the document to you outside the Freedom of Information legislation. The document is enclosed.

In this instance, I have decided that the formality of Freedom of Information processes is not necessary to enable us to return a copy of a document which you had provided to this office a few days prior to your email asking for it.

Yours sincerely



Gregory Parkhurst
Senior Investigation Officer

Australia's Worst White-Collar Crime

How the Commonwealth Ombudsman can prove the Fraud that has been covered-up by other Commonwealth Agencies

This document has been prepared to demonstrate how Mr Colin Neave, the Commonwealth Ombudsman, can prove how widows were defrauded out of their survivorship pension and how former employees of Elders IXL Limited and subsidiary companies received only a token retrenchment or retirement benefit after decades of loyal service

10 December 2014

Evidence Provided to AFP

The following documents have been included in evidence provided to the **Commonwealth Ombudsman**:

- (i) A copy of a consolidation Deed of Variation dated 6 May 1958 , and
- (ii) A copy of a purported Deed of Variation dated 26 August 1986 .

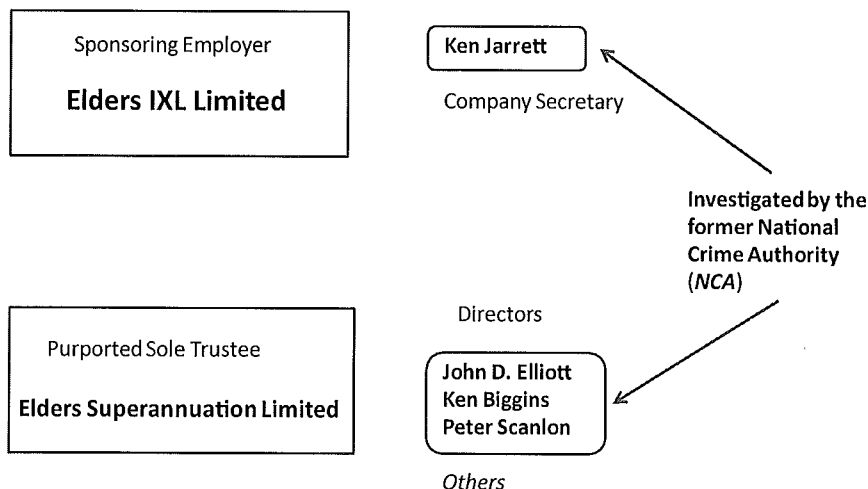
It should be noted that **Responsible Persons** of the purported corporate Trustee, criminally concealed the consolidation Deed of Variation dated 6 May 1958 from the *cestuis que trust* (ie members and beneficiaries) and that a copy of this important Deed was obtained with the assistance of the Deputy Premier and Attorney-General of South Australia, the Hon John Rau MP.

The former Fund Secretary, Ms Margaret O'Halloran, represented the purported Deed of Variation dated 26 August 1986 as the "**Trust Deed**" of the trust, when the legitimate "**Trust Deed**" that established the occupational pension trust was made on the 23 December 1913 [Exhibit J].

The 1913 Trust Deed was drafted by Sir John Downer who also co-drafted the **Australian Constitution**.

The parties to the document dated 26 August 1986 are as follows:

Parties to the 1986 Deed



The purported corporate Trustee that was a party to the "**Jarrett Deed**" had an "**all-star cast**" of Directors who had been the subject of two major investigations by the former **National Crime Authority (NCA)**.

The **National Crime Authority** was replaced by the **Australian Crime Commission**.

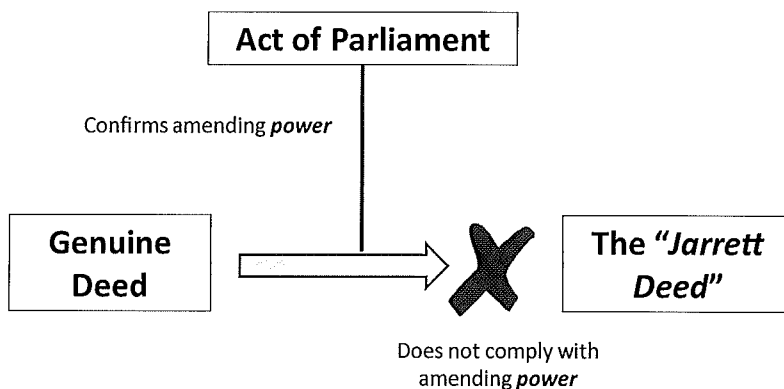
Mr Jarrett served a term of imprisonment for dishonesty, following the investigation known as ***Operation Albert***.

The document dated 26 August 1986 should have been a “***Red Flag***” document to any investigative agency.

Proving the Fraud

The fraud can be proven using just two documents and an Act of the Parliament of South Australia.

Proving the Fraud



The Act of Parliament is the ***Elder Smith & Co Limited Provident Funds Act 1963*** (SA).

Why was this Act of Parliament necessary?

Refer to ***The Laws of Australia*** {Thompson Reuters} at [15.14.1450] under the section “***It is the trustee’s plainest duty to obey the terms of the trust***” the following is stated:

“Where the trust instrument confers a power of amendment, the conditions and restrictions imposed on its exercise must themselves be strictly observed.”

The Act of Parliament confirms this principle of trust law. The ***Power of Amendment*** provided by the original Trust Deed prohibited the application of the funds of the trust to unauthorised purposes. Therefore the holder of the ***Power of Amendment***, the Board of the sponsoring Employer, could not amend the terms of the trust to allow benefits to be paid to employees of the new company that had acquired the original sponsoring employer.

Therefore an Act of Parliament was required to amend the terms of the trust, that was otherwise prohibited by the **Power of Amendment** contained in **Regulation 50**.

Examples of where the Courts have applied this principle of trust law are listed in **Appendix A**.

Here are the steps that the **Commonwealth Ombudsman** needs to take in order to prove **Australia's Worst White-Collar Crime**:

Step 1

Go to **Regulation 50** in the consolidation Deed of Variation dated 6 May 1958 {Refer to **Appendix A**}.

Regulation 50 provides the **Power of Amendment**.

Note how it is a condition imposed by the amending power {**Regulation 50**} that a majority of the Directors of the sponsoring Employer must execute any Deed of Variation.

This condition cannot be ignored as confirmed by the **Elder Smith & Co Limited Provident Funds Act 1963**(SA).

Step 2

Go to the *testimonium* (execution clause) of the 1958 Deed of Variation {**Exhibit B**} and note how a majority of the Directors have executed this Deed. In fact all the Directors in 1958 executed this Deed.

Step 3

Go to the *testimonium* (execution clause) of the purported 1986 Deed of Variation {**Exhibit C**} and count how many Directors of the sponsoring Employer have executed this Deed.

Step 4

Refer to the number of Directors required to constitute a majority in 1986 {**Exhibit D**}.

The Fraud is Proven

By counting the number of Directors' signatures, **the Commonwealth Ombudsman**, can prove **Australia's Worst White-Collar Crime**, committed by a well known white-collar criminal and his associates.

This is the crime that other Commonwealth Agencies have attempted to cover-up.

How difficult is that?

Mr Jarrett served a term of imprisonment for dishonesty.

The "**Jarrett Deed**" is void *ab initio* and the terms of the trust {**Regulations of the Fund**} were not amended by the "**Jarrett Deed**" or any instrument executed after the "**Jarrett Deed**".

The right of a widow to receive a survivorship pension was not abrogated by the "*Jarrett Deed*" and a token lump sum benefit did not replace the entitlement to a pension for life for qualifying male officers.

Next Steps for the Commonwealth Ombudsman

The next step for the Commonwealth Ombudsman is to investigate why:

- ASIC
- The *Australian Federal Police*, and
- The *Australian Crime Commission*

Do not have the expertise to count the number of Directors' signatures that appear on a document signed by the well known white-collar criminal Ken Jarrett.

Exhibit A

Regulation 50

Referenced by the *Elder Smith & Co Limited Provident Funds Act 1963 (SA)*

Alterations of Deed.	ALTERATION OF DEED
	50. No alteration to this Deed may be made which may authorise the application or use of any part of the Fund for any purpose other than—
	(a) The provision of pensions and benefits for officers their wives widows or dependants; (b) The making of any refund or allowance to officers; (c) The payment of the expenses arising out of the management control administration or protection of the Fund; (d) Indemnity to the Trustees as hereinafter provided; (e) Reimbursement to the Company of any losses of the nature herein specified.
	But subject to this provision the Board by a majority of all the Directors for the time being testified by their executing the Deed hereinafter mentioned may from time to time and at any time by deed with the assent in writing of the majority of the Trustees alter all or any of the provisions of this Deed (including the provisions for the appointment and retirement voluntary or compulsory of the Trustees) and may make new provisions to the exclusion of or in addition to all or any of the provisions of this Deed and shall by such deed declare the time retrospectively or otherwise when such alterations or new provisions shall come into force. Such alterations and new provisions shall be deemed to be provisions in relation to the Fund of the same validity as if they had been originally contained in this Deed and shall be subject in like manner to be added to altered or modified. The provisions of this Deed and of any future deed are and shall be and shall be deemed to be regulations in relation to the Fund.

Exhibit B

The *testimonium* (execution clause) of the 1958 consolidation Deed of Variation

sixth day of May One thousand nine hundred and fifty-eight.

SIGNED SEALED AND DELIVERED by the said ALEXANDER JOHN MELROSE in the presence of: J.E. Dobbs

Alex. J. Melrose

SIGNED SEALED AND DELIVERED by the said COLLIER ROBERT CUDMORE in the presence of: J.E. Dobbs

R. Cudmore

SIGNED SEALED AND DELIVERED by the said FREDERICK LLOYD DUMAS in the presence of: Rhoda Polgase

F. L. Dumas

SIGNED SEALED AND DELIVERED by the said TOM ELDER BARR SMITH in the presence of: J.E. Dobbs

Tom E. Barr Smith

SIGNED SEALED AND DELIVERED by the said IAN RICHARD McTAGGART in the presence of: J.E. Dobbs

I. R. McTaggart

SIGNED SEALED AND DELIVERED by the said ALFRED MOXON SIMPSON in the presence of: J.E. Dobbs

A. M. Simpson

SIGNED SEALED AND DELIVERED by the said HENRY NORMAN GILES in the presence of: J.E. Dobbs

H. N. Giles

SIGNED SEALED AND DELIVERED by the said NORMAN SMITH YOUNG in the presence of: J.E. Dobbs

N. S. Young

SIGNED SEALED AND DELIVERED by the said ALEXANDER JOHN MELROSE in the presence of: J.E. Dobbs

Alex. J. Melrose

SIGNED SEALED AND DELIVERED by the said FREDERICK LLOYD DUMAS in the presence of: Rhoda Polgase

F. L. Dumas

SIGNED SEALED AND DELIVERED by the said TOM ELDER BARR SMITH in the presence of: J.E. Dobbs

Tom E. Barr Smith

SIGNED SEALED AND DELIVERED by the said REGINALD WALTER SEEDSMAN in the presence of: J.E. Dobbs

R. W. Seedman

Exhibit C

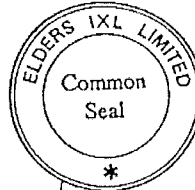
The *testimonium* (execution clause) of the purported 1986 Deed of Variation

- 3 -

THE COMMON SEAL of ELDERS)
IXL LIMITED was hereunto)
affixed in accordance with)
its Articles of Association)
in the presence of:)

:Director

:Secretary

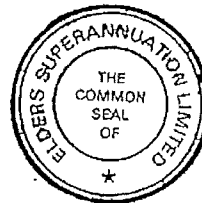


[Handwritten signature]

THE COMMON SEAL of ELDERS)
SUPERANNUATION LTD. was)
hereunto affixed in)
accordance with its Articles)
of Association in the)
presence of:)

:Director

:Secretary



[Handwritten signature]

Exhibit D

Directors of Elders IXL Limited

<u>Executive Directors</u>		<u>Director Since</u>	<u>30-Jun-86</u>	<u>30-Jun-87</u>
J.D. Elliott	#1	27-Nov-81	Chairman	Chairman
K.C. Jarrett	#2	1984	Director	Director
K.R. Biggins	#1	1986		Director
P.D. Scanlon	#1	27-Nov-81	Director	Director
G.F. Lord		1983	Director	Director
P.T. Bartels		1985	Director	Director
M.R. Nugent		1983	Director	Director
 <u>Independent Directors</u>				
J.M. Ballieu		27-Nov-81	Dep Chairman	Dep Chairman
E.A. Burton		27-Nov-81	Director	Director
D.I. Darling		27-Nov-81	Director	Director
S.B. Myer		27-Nov-81	Director	Director
G.M. Niall		1953	Director	Director
A.G. McGregor		1979	Director	Director
I.M. McLachlan		1980	Director	Director
O.R. Gunn		1984	Director	Director
J. Ralph		1984	Director	
The Hon Sir Edwin Williams		1984	Director	Director
B.T. Lotton		1986	Director	Director
<hr/> Total Number of Directors			17	17

Notes

(#1) Charged by the former *National Crime Authority* (NCA)

(#2) Charges dropped after turning Crown Witness and pleading guilty to lesser charges

Appendix A

Cases where the Courts have declared purported Amending Instruments Invalid

- *Briggs v Gleeds (Head Office)* [2014] EWCH 1178 (Ch)
- *Walker Morris Trustees Ltd. v Masterson & Anor* [2009] EWHC 1955 (Ch)
- *Sovereign Trustees Ltd & Anor v Glover & Ors* [2007] EWHC 1750 (Ch)
- *Trustee Solutions Ltd & Ors v Dubery & Anor* [2006] EWHC 1426 (Ch)
- *Meier v Dorzan Pty Limited & Anor* [2010] NSWSC 664
- *NSW MASONIC YOUTH PROPERTY TRUST & ANOR v HER MAJESTY'S ATTORNEY-GENERAL IN AND FOR THE STATE OF NSW & ANOR* [2009] NSWSC 1301
- *Hillcrest (Ilford) Pty Ltd v Kingsford (Ilford) Pty Ltd (No.2)* [2010] NSWSC 285
- *Re Cavill Hotels Pty Ltd* [1998] 1 Qd R 396.