

8 December 2014

12 Highland Way

Highton, 3216

Attn: Mr Chris Dawson APM

Chief Executive Officer

Australian Crime Commission

GPO Box 1936

Canberra City

ACT 2601

Dear Mr Dawson

RE: Operation Albert II

Australia's Worst White-Collar Crime

Proving the Crime

If a crime could be described as "***Australia's Worst White-Collar Crime***", then the alleged perpetrators should surely be already known the ***Australian Crime Commission (ACC)*** and its predecessor the ***National Crime Authority (NCA)***.

One of the most famous or infamous investigation conducted by the former ***NCA*** was known as ***Operation Albert***.

This investigation conducted by the ***NCA*** related to suspect foreign exchange transactions undertaken by the former executives of Elders IXL Limited, including Ken Jarrett, John Dorman Elliott, Ken Biggins and Peter Scanlon .

This investigation led to the imprisonment of Ken Jarrett for dishonest conduct.

Mr Jarrett executed a purported Deed of Variation dated 26 August 1986 that is central to proving this white-collar crime.

The attached document confirms just how easy it is for the CEO of the ***Australian Crime Commission*** to prove "***Australia's Worst White-Collar Crime***".

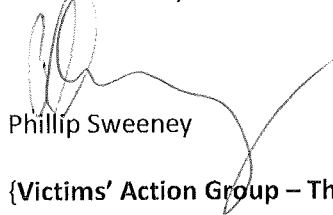
It is important to note that there is no **Limitation of Actions** period for a fraudulent Breach of Trust for a trust established in South Australia as can be confirmed by the South Australian Attorney-General, the Hon John Rau MP.

There is no **Limitations of Actions** period for criminal conduct.

It should also not be forgotten that superannuation is **COMPULSORY** in Australia as matter of Government policy.

The "**Next Step**" for the **Australian Crime Commission** is to assemble the evidence provided to the ACC and provide a report to the Commonwealth Attorney-General, Senator the Hon George Brandis QC as well as to the Deputy Premier and Attorney-General of South Australia, the Hon John Rau MP.

Yours Sincerely



Phillip Sweeney

{Victims' Action Group – The Provident Funds Fraud}

Cc Commonwealth Attorney-General, Senator the Hon George Brandis QC

Minister for Justice – Mr Michael Keenan MP (Member for Stirling)

Attorney-General of South Australia – The Hon John Rau MP

Attachments:

"How the CEO of the ACC can prove the Fraud"

Press Release dated 8 December 2014

Press Release

Victims' Action Group The Provident Funds Fraud

Proven

The Fraud is Proven

The Chairman of **ASIC**, Mr Greg Medcraft, has claimed that Australia is a '**Paradise**' for white-collar criminals - a statement he was forced to retract by the *Acting* Assistant Treasurer, Senator the Hon Mathias Cormann.

There are a number of white-collar criminals that should be well known to the **Australian Crime Commission (ACC)** that have an involvement in **Australia's Worst White-Collar Crime**, including:

- Ken Jarrett
- John Dorman Elliott
- Ken Biggins, and
- Peter Scanlon.

The crime they committed against the widows of former employees on **Elders IXL Limited** and subsidiary companies and the employees themselves is easily proven.

The High Court in England recently struck down 30 purported amending Deeds of a pension fund on the grounds that these Deeds had failed to comply with the legal formalities required for amending Deeds. Likewise there are 27 purported amending instruments related to **The Provident Fund** {aka **Elders IXL Superannuation Fund**} that fail to comply with the requirements of legally valid amending Deeds.

Lord Northington said in 1758:

"No point is better established than that, a person having a power, must execute it bona fide for the end designed, otherwise it is corrupt and void."

The legal principles of trust law when applied to this evidence, easily prove the fraudulent Breach of Trust causing substantial losses to the *cestuis que trust* (ie members and beneficiaries).

All Mr Chris Dawson APM, the CEO of the **Australian Crime Commission**, has to do to prove **Australia's Worst White-Collar Crime** is simply to count the number of Directors' signatures that appear on a document executed by the well known white-collar criminal, Ken Jarrett.

How simple is that!

Mr Dawson should now provide a report on the evidence and principles of law to both the Commonwealth Attorney-General and the Attorney-General of South Australia.

Victims' Action Group

The **Victims' Action Group** consists of members of two occupational pension funds, one established for male officers in 1913 and another established for female officers in 1963.

The Trust Estate of the fund established for female officers has "**disappeared**". Over \$100 million has "*gone missing*" from the Trust Estate of the fund established for male officers resulting in widows of qualifying male officers not receiving their pensions and qualifying male officers receiving only 20% of their lawful entitlements.

The pension fund established in 1913 was for most of its history called **The Provident Fund** but was later renamed the **Elders IXL Superannuation Fund**.

The **Victims' Action Group** is based on the **Maxwell Pensioners Action Group**
{<http://www.pensionsarchive.org/73/>}

Some Key Documents Provided to the *Australian Crime Commission*

"The Jarrett Deed"

Attached to a letter dated 26 November 2014 {Exhibit **ACC #23**}

"The Elliott Resolution"

Attached to a letter dated 7 October 2014 {Exhibit **ACC #21**}

Consolidation Deed of Variation dated 6 May 1958 ("The Perfect Deed")

Attached to a letter dated 19 May 2014 {Exhibit **ACC #1**}

Deed of Variation dated 20 November 1974

Attached to a letter dated 19 May 2014 {Exhibit **ACC #4**}

"The Cohen Resolution"

Attached to a letter dated 1 December 2014 {Exhibit **ACC #24**}.

Evidence Sourced from the Parliament of South Australia

Attached to a letter dated 14 August 2014 {Exhibit **ACC # 10**}

Letter from News Limited

Attached to a letter dated 19 May 2014 {Exhibit **ACC #5**}

The consolidation Deed of Variation dated 6 May 1958 confirms the entitlement of a pension for life for male officers who have completed at least 15 years of service.

The Deed of Variation dated 20 November 1974 confirms the right of widows to receive an *"automatic"* survivorship pension.

The *"Jarrett Deed"* purports to abrogate these entitlements and replace them with a token lump sum benefit.

The *"Jarrett Deed"* can be proven to be void and fraudulent simply by counting the number of Directors' signatures that appear on this document. How easy is that!

Australia's Worst White-Collar Crime

How the CEO of the *Australian Crime Commission* can prove the Fraud

This document has been prepared to demonstrate how Mr Chris Dawson APM, the Chief Executive Officer of the ***Australian Crime Commission***, 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

8 December 2014

Evidence Provided to ACC

The following documents have been included in evidence provided to **ASIC**:

- (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.

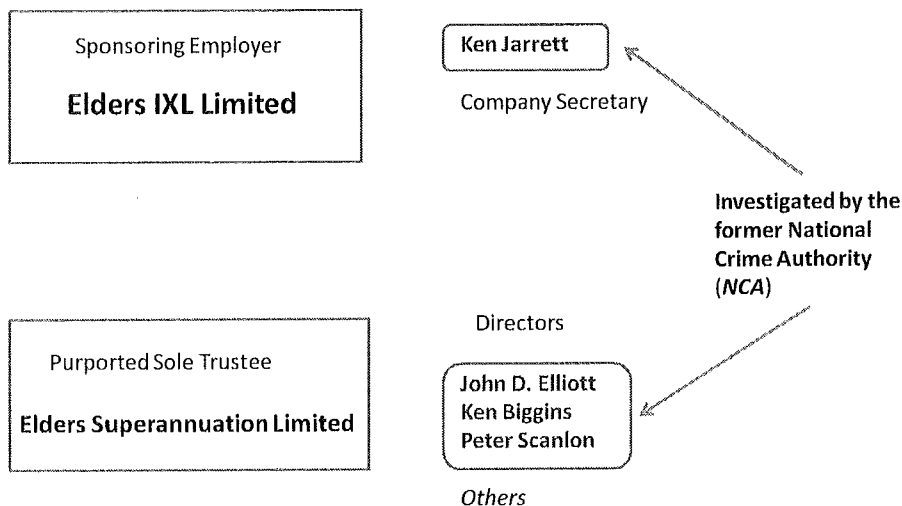
It should be noted that **Responsible Persons** of the purported corporate Trustee, criminally concealed the consolidation Deed of Variation dated 6 May 1958 from the *cestuis que trust* (ie members and beneficiaries) and that a copy of this important Deed was obtained with the assistance of the Deputy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

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**.

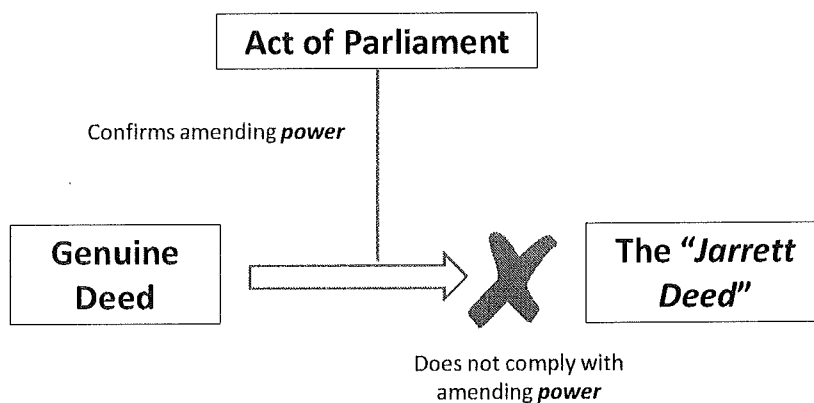
Mr Jarrett served a term of imprisonment for dishonesty, following the investigation known as **Operation Albert**.

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 CEO of the **Australian Crime Commission** 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, Mr Dawson, the CEO of the **Australian Crime Commission**, can prove **Australia's Worst White-Collar Crime**, committed by a well known white-collar criminal and his associates.

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 Australian Crime Commission

One of the functions of the **Australian Crime Commission** is to "**collect, correlate, analyse and disseminate criminal information and intelligence**".

This would clearly be the case where the "**criminal information and intelligence**" related to parties that had already been the subject of two major investigations by the former **National Crime Authority**.

The CEO of the **Australian Crime Commission** should now assemble the evidence provided to the **ACC** and obtain additional evidence from **ASIC** that confirms that over \$100 million was "**misappropriated**" from the Trust Estate of **The Provident Fund**.

Pursuant to **Section 12** of the **Australia Crime Commission Act 2002**, this evidence should be assembled and copies provided to:

- (i) The Commonwealth Attorney-General, Senator the Hon George Brandis QC, and
- (ii) The Deputy Premier and Attorney-General of South Australia, the Hon John Rau MP.

Exhibit A

Regulation 50

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

Alterations of Deed.	ALTERATION OF DEED
	<p>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—</p> <ul style="list-style-type: none">(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.
	<p>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.</p>

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 COLLETER 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 Polglase

F. Lloyd 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 NOXON SIMPSON in the presence of: J.E. Dobbs

A. N. 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 Polglase

F. Lloyd 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 SEEDSHAM in the presence of: J.E. Dobbs

R. W. Seedshan

Exhibit C

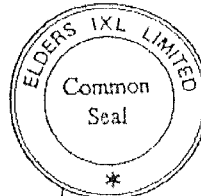
The *testimonium* (execution clause) of the purported 1986 Deed of Variation

- 3 -

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

:Director

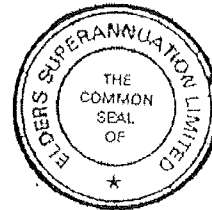
:Secretary



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

:Director

:Secretary



[Handwritten signatures]

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.

Appendix B

Section 12 of the Australian Crime Commission Act 2002

Performance of functions

(1) Where the ACC, in carrying out an ACC operation/investigation, obtains evidence of an offence against a law of the Commonwealth or of a State or Territory, being evidence that would be admissible in a prosecution for the offence, the CEO must assemble the evidence and give it to:

- (a) the Attorney-General of the Commonwealth or the State, as the case requires; or
- (b) the relevant law enforcement agency; or

(c) any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of the State or Territory to prosecute the offence.

Note 1: The CEO may also disseminate information in certain circumstances to law enforcement agencies and other bodies: see sections 59AA and 59AB.