

Australia's Worst White-Collar Crime

How the Chairman of APRA can prove the Fraud

This document has been prepared to demonstrate how Mr Wayne Byres, the Chairman of **APRA**, 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

22 December 2014

Evidence Provided to ASIC

After **ASIC** failed to obtain any Deeds or other instruments from the purported sole corporate Trustee, CCSL Limited (ACN 104 967 964), the following evidence was provided to both **ASIC** and **APRA**:

- (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.

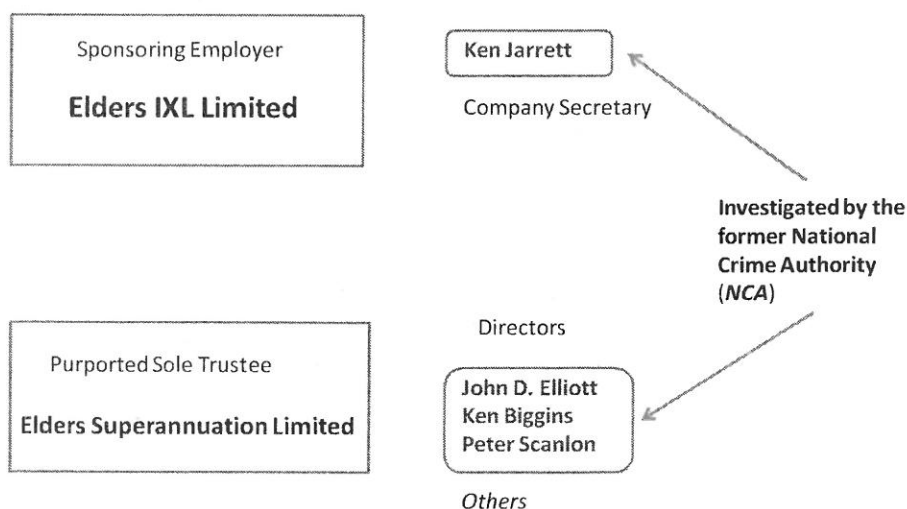
It should be noted that **Responsible Persons** of the purported corporate Trustee, criminally concealed the consolidation Deed of Variation dated 6 May 1958 from the *cestuis que trust* (ie members and beneficiaries) and that a copy of this important Deed was obtained with the assistance of the Deputy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

The criminal concealment of the genuine Deeds of this trust was also a serious breach of the conditions imposed on the purported Trustee's RSE Licence (L0000758) issued by **APRA**.

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 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)**.

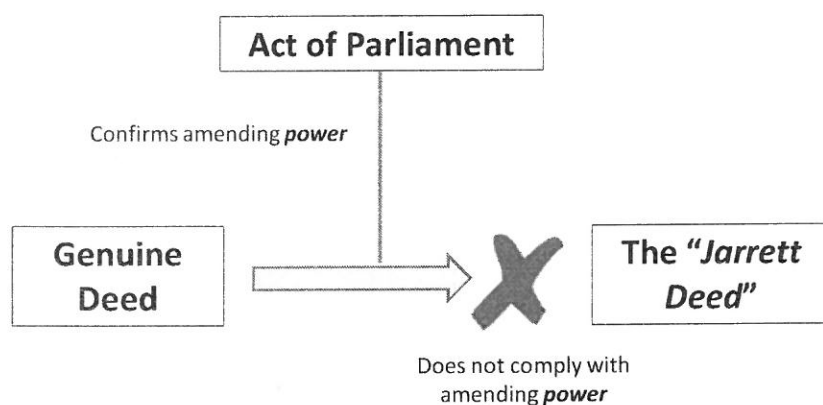
Mr Jarrett served a term of imprisonment for dishonesty, following the investigation known as **Operation Albert**.

The document dated 26 August 1986 should have been a "**Red Flag**" document to any "**Regulator**".

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 Chairman of **APRA** needs to take in order to prove **Australia's Worst White-Collar Crime** which involves an **APRA** regulated Superannuation Fund:

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 Byres, the Chairman of **APRA**, can prove **Australia's Worst White-Collar Crime**, committed by a well known white-collar criminal and his associates.

How difficult is that?

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.

The Chairman of **APRA** should now advise the Minister responsible for superannuation, the **Assistant Treasurer** - the Hon Joss Frydenberg MP, that the widows and other victims of this fraudulent conduct are now entitled to receive compensation from the funding mechanism that has been established to provide compensation to the victims of superannuation fraud { the ***Superannuation (Financial Assistance Funding) Levy Act 1993***}.

Both **APRA** and **ASIC** investigated the conduct of the corporate Trustee of the ***Trio Capital Superannuation Funds*** and the Hon Bill Shorten MP, when he was the Minister responsible for Superannuation, provided 100% compensation to the victims who were members of the four regulated funds.

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—
	<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.
	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 Polglase

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 BILES in the presence of: J.E. Dobbs

H. N. Biles

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

H. 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. 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



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

:Director

:Secretary

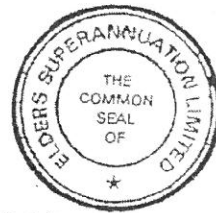


Exhibit D

Directors of Elders IXL Limited

Executive Directors

		<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

Independent Directors

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

Total Number of Directors	17	17
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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.