

7 March 2015

12 Highland Way

Highton, 3216

Attn: Mr Andrew Hagger

Group Executive, NAB Wealth and CEO MLC

National Australia Bank

800 Bourke St

UB3350

Docklands

Victoria 3008

Dear Mr Hagger

RE: Senate Economics Reference Committee Hearing

“It is a necessary part of any trust that there is a beneficiary capable of enforcing the trustees’ performance of their duties under the trust.”

Bowman v Secular Society Ltd [1917] AC 406, 441 per Lord Parker.

I refer to your testimony before the Senate **Economics Reference Committee** on 6 March 2015.

You made representations to the Committee that **NAB Wealth** has implemented improved breach reporting procedures so that the Regulators would be kept informed of misconduct by officers of **NAB Wealth**.

I have recently sent Mr Andrew Thorburn a number of letters in anticipation of his appearing before the Senate Committee, however he declined to appear.

A schedule of these letters is listed in **Appendix A**.

An important right that any person who is a beneficiary of a trust has is the right to have access to the original Trust Deed that established the trust and to any instrument that purports to vary the terms of the original Trust Deed.

This is fundamental to the laws of trusts.

In the case of regulated superannuation trusts, the Parliament of Australia has made it a criminal offence if a “*Responsible Person*” of a licensed Trustee wilfully conceals the original Trust Deed and amending instruments from a member or a beneficiary of the fund.

It is also a condition imposed on the licence of every superannuation Trustee by **APRA** for a Trustee to comply with the Trustee’s disclosure obligations.

On the 20 January 2014, a subsidiary company of MLC Ltd, PFS Nominees Pty Ltd, gained control of the Trust Estate of one of Australian’s oldest occupational pension trusts that was established on the 23 December 1913 in the State of South Australia. This fund was once known as the **Elders IXL Superannuation Fund** {and previously **The Provident Fund**}.

On 20 November 2014 I lodged a written request with Ms Peggy O’Neal, the legal director of PFS Nominees Pty Ltd for access to the original counterparts of the Deeds associated with this occupational pension trust. This letter was received on 24 November 2014. A copy of this letter is attached.

I should have been allowed access to the Deeds by 24 December 2014.

In a pension fund, fund membership terminates with death and not with the termination of a Contract of Employment. I am clearly still a member of this fund.

The fund in question is a pension fund as confirmed by the **Elder Smith & Co Limited Provident Funds Act 1963** (SA).

There has been no Deed of Variation executed in accordance with the provisions of the **Power of Amendment {Regulation 50}** that has repealed **Regulation 29** which provides the pension benefit to a male officer who has completed at least 15 years of service.

PFS Nominees Pty Ltd as a Trustee {even a constructive Trustee} is still required to make these pension payments. It is a blatant Breach of Trust if PFS Nominees Pty Ltd ignores **Regulation 29**.

PFS Nominees Pty Ltd is also required to make survivorship pension payments to widows as required by **Regulation 30A**. **Regulation 30A** has not been repealed {revoked}.

Ms Peggy O’Neal has failed to comply with her obligations pursuant to **subsection 1017C(5)** of the **Corporations Act 2001** as well as **Section 84B** of the *Trustee Act 1936* (SA).

Ms Peggy O’Neal has also failed to comply with her duties pursuant to **Section 52** of the **Superannuation Industry (Supervision) Act 1993** and the related license conditions imposed by **APRA**, which requires compliance with **subsection 1017C(5)** of the **Corporations Act 2001**.

I also sent similar letters to the Chairperson of PFS Nominees Pty Ltd, Ms Nicole Smith {Received on 10 December 2014} and to Directors Evelyn Horton and John Reid.

A written request was also lodged with the General Manager of PFS Nominees Pty Ltd in a letter dated 22 October 2014.

Copies of these letters are available of the superfraud.org website under the following tabs:

NAB Scandal

NAB Trustee

Correspondence with NAB Trustee

Requests for Access to Deeds

Breach Reports

Since it is an indictable offence to contravene **subsection 1017C(5)** of the *Corporations Act 2001*, this is a serious breach of the provisions of the *Corporations Act 2001*.

As the CEO of MLC Ltd you now must ensure that Breach Reports are now lodged with both **ASIC** and **APRA**.

The Breach Reports to **ASIC** will need to advise **ASIC** of the criminal contravention of **subsection 1017C(5)** by four Directors of PFS Nominees Pty Ltd and by the General Manager of PFS Nominees Pty Ltd.

The Breach Reports to **APRA** will need to advise **APRA** of the corresponding breach to the conditions imposed on the Trustee's RSE Licence Number L0002912.

Given the current focus on breach reporting by MLC Ltd, can you also please advise the Chair of the **Economics Reference Committee**, Senator Dastyari, when then breach notices have been lodged.

Please note that a copy of this letter has been posted on the website of superfraud.org under the "**NAB Scandal**" tab.

Deeds of Variation

You should also ask Ms Peggy O'Neal to provide you with a copy of a Deed of Variation that has been executed in accordance with provisions of the **Power of Amendment {Regulation 50}** that has repealed {revoked} **Regulation 29** and **Regulation 30A**.

These Regulations provide the pension benefits.

An amending instrument that adds a new benefit does not automatically repeal an existing provision. There must be a clear statement that an existing provision has been "**repealed**", "**revoked**" or "**deleted**".

Regulation 50 is referenced in the Elder **Smith & Co Limited Provident Funds Act 1963** (SA) and is the reason why this enactment was required in the first place.

Even if such Deeds could be produced, unless the benefit is replace with one of equivalent if not better value, a Court would declare the purported amending instrument void and ineffective under the doctrine of a "**Fraud on a Power**".

An Independent Review

I refer to the article by Adele Ferguson from **Fairfax Media** titled: "**NAB not deserving of trust on Financial Planners**".

The article states:

Senator Sam Dastyari, who chaired the Senate estimates hearing, repeatedly asked the bank's head of wealth, Andrew Hagger, to launch an independent review, similar to the Commonwealth Bank's. He refused

I put it to you that the reason that NAB is refusing an **Independent Review** is because of the likelihood that the scope of the review would be expanded once complaints from members of superannuation funds administered by **NAB Wealth** stated arriving on mass. {I am building up an extensive database of claimants}.

Adele Ferguson finishes her article with the prophetic statement from Senator Peter Whish-Wilson:

But the last word should go to Senator Peter Whish-Wilson, who said: "*We know there may be more financial scandals lurking out there under the surface waiting to be uncovered.*"

Yours Sincerely

Phillip Sweeney

{**NAB Wealth Whistleblower**}

Attachment:

Letter to Peggy O'Neal dated 20 November 2014

Cc **NAB** Chairman – Michael Chaney AO

Peggy O'Neal – PFS Nominees Pty Ltd {**NAB Wealth** Subsidiary}

Adele Ferguson – **Fairfax Media**

Michael West – **Fairfax Media**

Clancy Yeates – **Fairfax media**

Senator Sam Dastyari – Chairman: **Senate Economics Reference Committee**

Senator John Williams

Senator Nick Xenophon

Senator Peter Whish-Wilson

Appendix A

Schedule of Recent Letters

Letter to **NAB CEO** dated 24 February 2015 *{Received 25 February 2015}*

Letter to **NAB CEO** dated 25 February 2015 *{Received 26 February 2015}*

Letter to **NAB CEO** dated 26 February 2015 *{Received 2 March 2015}*

Letter to **NAB Chairman** dated 1 March 2015

Letter to **NAB CEO** dated 4 March 2015

Letter to **NAB CEO** dated 3 March 2015

Letter to **NAB CEO** dated 2 March 2015

Note: Copies of these letters are available from the website:

Superfraud.org under the tabs:

- NAB Scandal
Correspondence with NAB CEO