

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

corporations.joint@aph.gov.au

Dear Chair and Members of the Joint House Committee on Corporations and Financial Services

Re: Regulation of Auditing in Australia

This submission to the inquiry into the **Regulation of Auditing in Australia** relates to the auditing of one of Australia's oldest occupational pension schemes that was established by a Trust Deed made on the 23 December 1913 in the State of South Australia.

This **Defined Benefit** occupational pension scheme was closed to new members on 30 November 1997, several years before the then Prime Minister, the Hon John Howard MP, closed a similar **Defined Benefit** pension scheme to Members of Parliament and Senators.

The Regulations of this **Defined Benefit** pension scheme were amended by the ***Elder Smith & Co Provident Funds Act 1963*** (SA).

This fund has been known by several names including **The Provident Fund**, the **Foster's Group Superannuation Fund** and the **Ausbev Superannuation Fund**.

From 23 December 1913 to 20 January 2014 this pension scheme was a standalone corporate scheme.

On the 20 January 2014 the Trust Estate (assets) of this superannuation fund were transferred to the control of a subsidiary company of the **National Australia Bank (NAB)**. On 1 July 2016 the Trust Estate (assets) were transferred to another subsidiary company of NAB – NULIS Nominees (Australia) Ltd.

It has been purported that this **Defined Benefit** fund was a '*sub-fund*' of the **Plum Superannuation Fund** and then a '*sub-fund*' of the **MLC Super Fund**.

At the time of these transfers the Chairman of these corporate trustees, was Nicole Smith, who featured in the Hayne Royal Commission.

A copy of a letter from the **Ernst & Young** fund auditor dated 16 June 2014 is provided in **Exhibit #1**.

A copy of a letter from the **Ernst & Young** fund auditor dated 25 June 2014 is provided in **Exhibit #2**.

Prior to the transfer of the fund assets to the control of the **National Australia Bank** the fund was audited by **PwC**.

A copy of a letter from the **PwC** fund auditor dated 17 February 2011 is provided in **Exhibit #3**.

A copy of a letter from the **PwC** fund auditor dated 19 July 2013 is provided in **Exhibit #4**.

REGULATION OF AUDITING IN AUSTRALIA

A copy of the *Independent Auditor's Report on the APRA Annual Return and Compliance* for the year ending 30 June 2012 is shown in **Exhibit #5**. This is similar to reports for other years.

There are a number of provisions of the *Corporations Act 2001* that the fund auditor must confirm compliance by the trustee:

c) complied with the relevant requirements of the following provisions of the *Corporations Act* and *Corporations Regulations* (to the extent applicable):

Sections 1012B, 1012F, 1012H(2), 1012I, 1013B, 1013D, 1013K(1), 1013K(2), 1016A(2), 1016A(3), 1017B(1), 1017B(5), 1017C(2), 1017C(3), 1017C(5), 1017C(8), 1017D(1), 1017D(3), 1017D(3A), 1017DA(3), 1017E(2), 1017E(3), 1017E(4), 1020E(8) and 1020E(9); and

regulations 7.9.11O and 7.9.32(3); and

One of these is subsection 1017C(5) of the *Corporations Act 2001* which provides a statutory right to inspect trust documents including the founding Trust Deed that established the superannuation trust as well as any associated valid amending Deeds.

These legal documents form part of the 'governing rules' of the fund along with State and Commonwealth legislation.

The former High Court Chief Justice as French J summarised the rights of beneficiaries (ie fund members).

Beneficiary's Right of Access General Law and the Corporations Act 2001

[30] I accept that there are some rights enjoyed, even by the beneficiaries of a non-exhaustive discretionary trust with an open class of beneficiaries. They include the right to inspect the trust documents – *Re Londonderry's Settlement* [1965] Ch 918 and the right to require the trustee to provide information about management of the trust fund – *Spellson v George* (1987) 11 NSWLR 300; *Hartigan Nominees Pty Ltd v Rydge* (1992) 29 NSWLR 405. There is also a right to enforce the proper management of the trust by the trustee – *Commissioner of Stamp Duties (Qld) v Livingston* [1965] AC 694; *Re Atkinson* [1971] VR 613.

Australian Securities and Investments Commission In the Matter of Richstar Enterprises Pty Ltd (ACN 099 071 968) v Carey (No 6) : [2006] FCA 814; (2006) 153 FCR 509; 233 ALR 475

Subsection 1017C(5)

Subsection 1017C(2)

There has been non-compliance with **subsection 1017C(5)** by NULIS Nominees (Australia) Limited since 1 July 2016 and by previous corporate trustees.

However, the **Ernst & Young** and **PwC** fund auditors have all certified compliance in the **Compliance Report** that the corporate trustees have lodged with APRA every year.

REGULATION OF AUDITING IN AUSTRALIA

The Joint Committee may wish to seek an explanation on why these fund auditors certified compliance?

The Joint Committee may also wish to seek APRA's view on the falsification of **Compliance Reports** by superannuation fund auditors in a compulsory superannuation system.

The submission provides the Joint Committee with one example of serious and systemic regulatory failure of auditing by two of the **Big Four** auditing firms.

The High Court of Australia has stated:

“For some people, superannuation is their greatest asset apart from their houses; for others, it is even more valuable.

.....

The legitimate expectations which beneficiaries of superannuation funds have that decisions about benefits will be soundly taken are thus high. So is the general public importance of them being sound.

.....

Because of the potentially lengthy time periods over which superannuation savings are accumulated, it was natural, and it is now in many instances mandatory, for a trust mechanism to be employed. These funds have increasingly come under detailed statutory regulation. The government considers that the taxation advantages of superannuation should not be enjoyed unless superannuation funds are operating efficiently and lawfully

Finch v Telstra Super Pty Ltd [2010] HCA 36