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Australia's Federal Prosecution Service

Commonwealth Director
of Public Prosecutions

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Your Reference:

Our Reference: HA14100269/1

COPY

19 August 2014

Mr Philip Sweeney
12 Highland Way
HIGHTON VIC 3216,

Dear Mr Sweeney,

RE: FREEDOM OF INFORMATION ('FOI') REQUEST

I refer to your letter dated 25 July 2014 in which you attached a cheque in the amount of $10.60.

Payment of the charges imposed has now enabled the processing of your FOI request which was originally received by the CDPP on 20 April 2014.

I have identified 22 pages of material that comes within the scope of your request. As the material originated from you, I have decided to release it in full. Copies are attached to this letter.

Yours faithfully

B.P. Sangster

Benjamin Sangster
Senior Federal Prosecutor


СОЫ

COPY

The Provident Fund Case

8 September 2013

Your Ref: HA11101073

12 Highland Way

Highton, 3216

	Initials	Date
Director		
First Deputy Director		
Deputy Director, Legal & Practice Mgmt		
Deputy Director, Corporate Mgmt		
Deputy Director, CICT		17.9
SES Crim Assets		
SES Prosecutions		

Rec'd

Attn: Mr Robert Bromwich SC

Commonwealth Director of Public Prosecutions

GPO Box 3104,
CANBERRA ACT 2601

Dear Director

RE: Crimes of National Significance

Further to my recent correspondence please find attached more important evidentiary documents.

It is a fundamental legal right of a person with a "*beneficial interest*" in a trust to have access to the "*trust instrument*". In the case of **The Provident Fund** the "*trust instrument*" is the founding Trust Deed dated 23 December 1913 plus all subsequent valid Deeds of Variation.

This set of legal documents is also known as the "*governing rules*" of the fund.

The "***authorised purpose***" of **The Provident Fund** is to provide "*pensions and benefits for male officers, their wives, widows and dependents*" {Refer to the ***Elder Smith & Co Limited Provident Funds Act 1963*** (SA).

Although a copy of the Trust Deed of the **Elders-GM Women's Provident Fund** is yet to be disclosed by the purported Trustee it can be assumed that the "***authorised purpose***" of this trust is to provide "*pensions and benefits for female officers, their husbands, widowers and dependents*".

Over a period of six years Responsible Officers of the purported Trustee, CCSL Limited, have refused to disclose any "***pre-John Elliott Era***" Deeds of the fund to myself, even though I am a person with a "*beneficial interest*" in this trust.

I have a legal right as a "*beneficiary*" of this trust to have access to the Deeds of this trust under:

- The general law of trusts,
- **Section 84B** of the ***Trustee Act 1936*** (SA) {As confirmed by the Attorney-General of South Australia, the Hon John Rau, MP}, and
- **Subsection 1017C(5)** of the ***Corporations Act 2001***.

It was the intention of the Parliament of Australia to make the concealment of the Deeds of a Government Regulated Superannuation Fund a serious offence and it is an indictable offence to contravene **subsection 1017C(5)** of the ***Corporations Act 2001***.

297B	Subsection 1017C(5)	100 penalty units or imprisonment for 2 years, or both.

The Government enacted the ***Superannuation Safety Amendment Act 2004*** to empower the Prudential Regulator – ***APRA*** to licence the Trustees of Government Regulated Superannuation Funds.

It is a condition of every RSE Licence issued by ***APRA*** for Trustee to comply with their disclosure obligations at all times pursuant to **subsection 1017C(5)** of the ***Corporations Act 2001***.

APRA has the power to suspend or revoke the RSE Licence of any Trustee who contravenes **subsection 1017C** of the ***Corporations Act 2001***.

It is also the intention of Parliament for the "*Independent*" Auditor of a Government Regulated Superannuation Fund to report contraventions of the ***Corporations Act 2001*** to both ***ASIC*** and ***APRA*** {**Appendices A** and **B**}.

Furthermore the Auditor has to prepare a **Section 35B Compliance Report** for the Trustee to submit to ***APRA*** each year.

I have repeatedly advised the supposed "*independent*" Fund Audit partner of PricewaterhouseCoopers (***PwC***) that the purported Trustee refuses to disclose the ***"pre-John Elliott Era"*** Deeds of **The Provident Fund**.

However the Audit Partner has just ignored the contraventions of the purported Trustee **[Exhibit AZ** and **Exhibit BA]**.

Furthermore the ***PwC*** Audit Partner has prepared **Section 35B Compliance Reports** falsely claiming that the purported Trustee has complied with the Trustee's disclosure obligations pursuant to **subsection 1017C(5)** of the ***Corporations Act 2001***.

Attached as **Exhibit BB** is the **Part B** of the **Section 35B Compliance Report** dated 25 October 2012 which falsely claims that the purported Trustee has complied with **subsection 1017C(5)** of the ***Corporations Act 2001***.

Similar false statements have also been made in the 2007, 2008, 2009, 2010 and 2011 Compliance Reports.

"Knowing Assistance" to a Breach of Trust.

PwC has a liability for a "*duty of care*" under tort as well as a liability under equity for assisting with ***knowledge*** to a dishonest and fraudulent design on the part of the purported Trustee. The liability under equity is known as the 2nd limb of ***Barnes v Addy***.

Justices Finn, Stone and Perram made the following comments in relation to Third Party Liability in ***Grimaldi v Chameleon Mining NL (No 2)*** [2012] FCAFC 6:

1. The Applicable Legal Principles

(i) Third Party Liability: A Digression

242. It is accepted in this country that Lord Selborne's ex tempore observations in *Barnes v Addy (* LR 9 Ch App 244) did not provide an exhaustive statement of the circumstances in which, and the bases on which, a third party's participation in another's breach of fiduciary duty or breach of trust, could render that person accountable in equity as a "constructive trustee" (to use the commonly adopted but often unhelpful formula): *Farah Constructions*, at [161].

243. The fact findings made in this case reveal, potentially, four quite different manifestations of such participation. Each type warrants present note. The *first*, is where the third party is the corporate creature, vehicle, or alter ego of wrongdoing fiduciaries who use it to secure the profits of, or to inflict the losses by, their breach of fiduciary duty: see eg *Cook v Deeks* [1916] AC 554 ("Cook") at 565; *Queensland Mines Ltd v Hudson* (1975-1976) ACLC 28, 658 at 27,709, revsd on other grounds (1978) 18 ALR 1; *Timber Engineering Co Pty Ltd v Anderson* [1980] 2 NSWLR 488 ("Timber Engineering") at (11); *Green & Clara Pty Ltd v Bestobell Industries Pty Ltd (No 2)* [1984] WAR 32 ("Green v Bestobell"); *Gencor ACP Ltd v Dalby* [2000] EWHC 1560; [2000] 2 BCLC 734 at [26]; *CMS Dolphin Ltd v Simonet* [2001] EWCA Civ 1545; [2001] 2 BCLC 704 ("CMS Dolphin") at [97]-[105]. In these cases the corporate vehicle is fully liable for the profits made from, and the losses inflicted by, the fiduciary's wrong. The liability itself is explained commonly on the basis that ***"company had full knowledge of all of the facts"***: *Cook*, at 565; it is the alter ego of the fiduciary with a "transmitted fiduciary obligation": *Timber Engineering*, at (11); or that it ***"jointly participated"*** in the breach: *CMS Dolphin* at [103]. Liability does not turn on the need to show *"dishonesty"*, although it often provides the reason for the interposition of the company. Proof of a breach of fiduciary duty will suffice; *Green v Bestobell*, at 40. And, as was said in *CMS Dolphin* (at [104]), it is *"rather artificial"* to use *Barnes v Addy* to explain this liability.

244. The *second* is where an agent of a company (often a director) has knowledge of fiduciary or trust wrongdoing (be it his or her own or a third party's) which can be imputed to the company, the wrongdoing itself affecting a transaction or dealing involving the company: see eg *John v Dodwell & Co* [1918] AC 563 at 569. Though the liability of the corporation here results from the imputation to it of knowledge of wrongdoing, the corporation's own wrong for which it is held accountable is characteristically under one or other of the two limbs of *Barnes v Addy*. We refer later to the limits to the imputation of knowledge and, when considering relief, to the nature of the liability imposed in such cases.

245. The *third* is where the third party knowingly **induces or procures a** breach of trust or breach of fiduciary duty whether for his or her own, or for another person's, benefit. As with corporate alter ego cases, it is not necessary to show any dishonest or fraudulent design here: see *Elders Trustee and Executor Co Pty Ltd v E G Reeves Pty Ltd* [1987] FCA 332; (1987) 78 ALR 193 at 238-239; *Farah Constructions*, at [161]; and see generally Harpum, ***"The Stranger as Constructive Trustee"*** (1986) 102 LQR 114 at 141-144.

246. The *fourth* is where the third party deals with a known agent (or fiduciary) in a projected transaction with the agent's principal (or beneficiary) and in the course of so dealing offers and has accepted, or agrees to the agent's solicitation of, a commission, introduction fee or other collateral benefit without the informed consent of the principal. In such a case the third party's liability is founded on the assumption of the risk that the agent

has not obtained the informed consent of the principal to the receipt of such a benefit and hence is acting in breach of fiduciary duty: see *Grant v Gold Exploration and Development Syndicate* at 249; *Daraydan Holdings*, at [53]; and, above, "Bribes and Secret Commissions".

247. What the above appears to illustrate is that participatory liability as it evolved in equity in cases prior and subsequent to *Barnes v Addy* was not based on inflexible formulae. Given the variety of circumstances in which, and bases on which, a third party could be characterised as a wrongdoer in equity – and we have not here referred as well to third party participation, for example, in a breach of confidence or the abuse of a relationship of influence: see eg *Bank of New South Wales v Rogers* [1941] HCA 9; (1941) 65 CLR 42 – varying importance has been given to three matters: (i) the nature of the actual fiduciary or trustee wrongdoing in which the third party was a participant; (ii) the nature of the third party's role and participation, eg as alter ago, inducer or procurer, dealer at arm's length, etc; and (iii) the extent of the participant's knowledge or, assumption of the risk of, or indifference to, actual, apprehended or suspected wrongdoing by the fiduciary.

248. While the distinctive circumstances of this case has prompted this digression, we are relieved of the need to explore the above categories further. Under the shadow of *Farah*, the present case, understandably, has been pleaded and run solely as a *Barnes v Addy* case though, as will be seen, it could in part have been run as a "procurement" case and a "bribe/secret commission" one. Necessarily we limit ourselves to what is to be derived from *Barnes* as it is now understood in Australia.

(ii) Barnes v Addy: The Liabilities for Knowing Receipt and Knowing Assistance

249. The extent of discord both within and between common law jurisdictions as to what should be taken to be the contemporary burden of the principles enumerated by Lord Selbourne is marked to the point of being Babel-like: for a survey see Ananian-Cooper, "*The Liability of Third Parties for Breaches of Trust or Fiduciary Duty: A Comparative Look at Five Themes Across Four Jurisdictions*", in Weaver and Cragie, *Banker and Customer*, vol 5, 25-1701; and cf Underhill and Hayton, *Law of Trusts and Trustees*, Ch 24, 18th ed (2010), *Waters' Law of Trusts in Canada*, 492-500, 3rd ed (2005), Butler (ed), *Equity and Trusts in New Zealand*, Ch 18, 2nd ed (2009) and *Jacobs' Law of Trusts in Australia*, [1333] ff, 7th ed (2006). It stands in stark contrast to the apparent simplicity of what was said in *Barnes v Addy* (at 251-252):

> ... strangers are not to be made constructive trustees ... unless [they] receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees."

250. Because of the distinctions which are drawn not only in what follows, but also elsewhere in these reasons, it is necessary that certain general comments be made at the outset about trust law, property law and fiduciary law.

251. The starting point is the proposition that a third party who acquires legal title to trust property as a purchaser in good faith for value and without notice of any breach of trust or prior equitable interest has a defence in equity to any claim for specific restitution of the property or for compensation for its value to restore the trust property: see generally Ford and Lee, *Principles of the Law of Trusts* [22.10320]-[22.10340]. Importantly notice here extends beyond actual notice and includes constructive notice in its traditional equitable sense. Such constructive notice will attribute notice of a fact to a person who, while lacking knowledge of it, had knowledge of facts which would put a reasonable person on inquiry. This species of notice is considered below. What requires present note is that a third party

who has *only* this form of notice when receiving trust property in breach of trust cannot avail of the bona fide purchaser defence. In consequence that person will be liable in proprietary, *in rem*, proceedings to make specific restitution to the "true owner" of such trust property (or its traceable proceeds) as remains in his or her hands. While this type of claim is, potentially, available to be made in *Barnes v Addy* "knowing receipt" cases, it is a separate and distinct liability. It is, in essence, a claim to priority.

252. The need to distinguish it from *Barnes v Addy* liabilities was rightly emphasised by Megarry VC in *Re Montagu's Settlement Trusts* [1987] 1 Ch 264 at 272-273:

> ... the doctrines of purchaser without notice and constructive trusts are concerned with matters which differ in important respects. The former is concerned with the question whether a person takes property subject to or free from some equity. The latter is concerned with whether or not a person is to have imposed upon him the personal burdens and obligations of trusteeship. I do not see why one of the touchstones for determining the burdens on property should be the same as that for deciding whether to impose a personal obligation on a man. The cold calculus of constructive and imputed notice does not seem to me to be an appropriate instrument for deciding whether a man's conscience is sufficiently affected for it to be right to bind him by the obligations of a constructive trustee.

253. This exposes what has long been recognised as the essential characteristic of the *Barnes v Addy* liabilities: they expose the persons to whom they apply to personal, to *in personam*, liabilities: see eg Lewin, *Law of Trusts*, 1026-1029 (9th ed, 1891); Ashburner, *Principles of Equity*, 187-200 (1901) where the difference between the proprietary and the personal remedy is emphasised; Snell, *Principles of Equity*, 141-142 (15th ed, 1908); for contemporary views, see eg Ford and Lee, *Principles of the Law of Trusts*, [22.10440) ff; Jacobs' *Law of Trusts in Australia*, [1333]-[1334] (7th ed, 2006); and see generally Dietrich and Ridge "'The Receipt of What?': Questions Concerning Third Party Recipient Liability in Equity and Unjust Enrichment"[2007] MelbULawRw 3; , (2007) 31 Melb UL Rev 47 at 51-55; Harpum, "The Stranger as Constructive Trustee" (1986) 102 LQR 114 at 118 ff. In knowing receipt cases, the recipient can be required to pay compensation for loss arising from the misapplication of the trust property, or to account for gains made from it. These liabilities do not depend upon the third party retaining any part of the property received (or its traceable proceeds) in his or her hands although, if such property is retained, it must be accounted for specifically: see Mitchell and Watterson, "Remedies for Knowing Receipt" in Mitchell (ed), *Constructive and Resulting Trusts*, 132 ff (2010); see also *Morlea Professional Services Pty Ltd v Richard Walter Pty Ltd* [1999] FCA 1820; (1999) 96 FCR 217 at [75]- [76]. But in the usual case, as Lewison J observed in *Ultraframe (UK) Ltd v Fielding* [2005] EWHC 1638 (Ch) ("Ultraframe (UK)"), the personal remedy "is needed precisely where the recipient has not retained the property."

254. Distinctly while the proprietary liability referred to depends upon the existence of trust property in the strict sense, "trust property" for *Barnes v Addy* purposes extends beyond it to property held or controlled subject to a fiduciary obligation. Most importantly for present purposes, it extends to corporate property, ie property subject to the control and the fiduciary responsibilities of a company's directors. If the directors dispose of corporate property in a dealing which is beyond their authority, whether actual, ostensible or usual, the dealing ordinarily is void and no interest passes to the third party donee, purchaser, etc. However, if the dealing occurs in a transaction which is within the directors' authority but which is not in the company's interests (ie is an abuse of power) or is otherwise in breach of fiduciary duty, the transaction will only be voidable: *Richard Brady Franks Ltd v Price* [1937] HCA 42; (1937) 58 CLR 112 at 142. As Australian law now stands, even if the third party recipient falls within the knowing receipt limb of *Barnes v Addy*, the

company will not ordinarily be able to bring a proprietary claim against the recipient as distinct from a personal one, unless and until the transaction itself has been avoided: see *Daly v Sydney Stock Exchange* [1986] HCA 25; (1986) 160 CLR 371 ("Daly"); *Hancock Family Memorial Foundation Ltd v Porteus* (2000) 22 WAR 193 (*"Hancock Family Memorial Foundation")* at [173]-[206]. Though we later question the correctness of this particular requirement, what needs to be emphasised is that it still allows that a knowing recipient can be held accountable *in rem* for such of that property (or its traceable proceeds) as remains extant in that person's hands.

255. Finally, it is well accepted in this country that, where property is acquired from another by theft, proprietary relief by way of imposition of a constructive trust should be granted if appropriate: *Black v S Freedman & Co* [1910] HCA 58;(1910) 12 CLR 105.

256. The above are all cases where the property or interest sought to be recovered (or its traceable proceeds) is, or had been, the property of the claimant. Distinct from these are those cases where a constructive trust is sought to be imposed by way of remedy on extant property which a delinquent fiduciary or a third party participant in fiduciary or trust wrongdoing has derived on their own account as a result of their wrongdoing. This use of the constructive trust as a remedy in addition to, or as an alternative to, the well accepted personal remedies available against fiduciaries and knowing participants in fiduciary wrongdoing, is very much in issue in the present matter.

257. Turning directly to *Barnes v Addy*, the first real cause of uncertainty with the "two limbs" is whether they are in fact two discrete types of liability or are merely different species of a single genus of liabilities. This is a matter we need to explore in some degree (though by no means exhaustively) as the Murchison/Winterfall Notice of Cross-Appeal, Ground 10 is premised, not only upon there being two distinct liability rules, but also upon their having differing knowledge/notice requirements. We would preface what we have to say with the comment that we do not consider that the important observations made by the High Court in *Zhu v Treasurer of the State of New South Wales* [2004] HCA 56; (2004) 218 CLR 530 at [121] about the purposes of legal intervention against third parties who obtain trust property in breach of trust or who obtain some advantage as a result of the trustee's breach of trust or who knowingly assist other fiduciaries to breach their duties, were directed at the particular issue we are about to consider and do not assist in resolving it.

258. The conventional view in Commonwealth jurisdictions has been to treat the two limbs as distinct. This tendency has of recent times been exaggerated by the twin propensities of some judges in some jurisdictions to explain recipient liability in essentially property law terms and, as such, as being concerned either with rights of priority to property: see eg *Agip (Africa) Ltd v Jackson* [1990] 1 Ch 265 at 292-293; *Citadel General Assurance Co v Lloyds Bank Canada*(1997) 152 DLR (4th) 411 at [45]-[51]; or else with unjust enrichment/an obligation of restitution, arising from the circumstances of receipt of property: *Citadel General*, ibid; *Royal Brunei Airlines Sdn Bhd v Tan* [1995] UKPC 4;[1995] 2 AC 378 at 386 ("[r]ecipient liability is based on restitution; accessory liability is not"); see also Nicholls, "Knowing Receipt: The Need for a New Landmark" in Cornish et al, *Restitution Past, Present and Future* (1998); Underhill and Hayton, 98.37 ff. Whatever sway the latter of these explanations may have in some common law jurisdictions notably in Canada and possibly New Zealand: *Equiticorp Industries Group Ltd v The Crown* [1998] 2 NZLR 481 at 632-633; and see Butler (ed), 18-14; courts still have shown little appetite in receipt cases – and appropriately so – for strict liability coupled with a change of position defence: see *Citadel General*, at [51]: but cf*Koorootang Nominees Pty Ltd v Australia and New Zealand Banking Group Ltd* [1998] 3 VR 16 at 105. The liability itself to that extent would seem to remain "fault" based, the level of fault turning on the particular level of knowledge of the breach of

trust/breach of fiduciary duty required in the jurisdiction in question. So, for example, the currently accepted law in England is that:

> ... liability for "knowing receipt" depends on the defendant having sufficient knowledge of the circumstances as to make it "unconscionable" for him to retain the benefit or pay it away for his own purposes.

See *Charter plc v City Index Ltd* [2008] Ch 313 at 321; *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437 at 448 and 455.

259. Put compendiously liability both for knowing receipt and knowing assistance turns on what the third party knew, or had reason to know, of the circumstances constituting the breach of "trust" (recipient liability) or the "dishonest and fraudulent design" (assistance liability). It is here, as justly observed in *Jacobs'* (at [1335]), that the whole topic has "become bedevilled by an obsessive refinement of distinctions between degrees of knowledge and notice". What the authors have described as the "zenith of complexity" was attained by Peter Gibson J in *Baden v Société Générale pour Favouriser le Développment du Commerce et de l'Industrie en France SA* [1993] 1 WLR 509 at [250] where five categories of knowledge and notice were postulated. They were:

(i) "actual" knowledge;
(ii) the wilful shutting of eyes to the obvious ("***Nelsonian***" knowledge);

(iii) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make;

(iv) knowledge of circumstances which would indicate the facts to an honest and reasonable man; and

(v) knowledge of circumstances which would put an honest reasonable man on inquiry (that is, constructive notice as traditionally understood).

260. The comment that should be made at the outset about this five-fold classification is that it tends to invite the use of formulae to solve problems. Unsurprisingly judges have cautioned against treating each category as an exclusive and rigid one. That caution is justified and is illustrated in his Honour's reasons as will be seen.

261. The first two categories of "***knowledge***" require no comment. The third involves such a calculated abstention from inquiry as would disentitle the third party to rely upon lack of actual knowledge of the trustee's or fiduciary's wrongdoing. The fourth reflects what seems to have been accepted provisionally by three judges of the High Court in *Consul Development Pty Ltd v DPC Estates Pty Ltd* [1975] HCA 8; (1975) 132 CLR 373 at 398 and 412-413. It is, in essence, an understandable, objective, default rule designed to prevent a third party setting up his or her own "moral obtuseness" as the reason for not recognising an impropriety that would have been apparent to an ordinary person:*Consul*, 398. It is the surrogate of actual knowledge. The form of constructive notice used in category (v) derives from the bona fide purchaser for value without notice doctrine.

262. For the purposes of the "***knowing assistance***" liability, *Farah* has indicated beyond question in this Court that "knowledge/notice" falling within the first four categories, but

not the fifth, represents Australian law. The matter we would emphasise is that that limb of *Barnes v Addy* is based manifestly on the third party's own wrongdoing in the circumstances.

263. When one turns to ***"knowing receipt"*** a more complex picture emerges. It is necessary to refer initially to English law. Prior to the abandonment of the *Baden* categories in England, first in relation to "knowing assistance" in *Royal Brunei Airlines*, and then in relation to "knowing receipt" in *BCCI (Operations)*, there were two distinct lines of cases on recipient liability. One expressed the view that cases typically falling within categories (iv) and (v) would not suffice for liability: see eg *Re Montagu's Settlement Trusts* at 285; *Eagle Trust plc v SBC Securities Ltd* [1992] 4 All ER 488 at 509; *Cowan de Groot Properties Ltd v Eagle Trust plc* [1992] 4 All ER 700 at 758-761. What has been called the third party's "want of probity" needed to be shown. The other line, which Millett J's observations in *Agip (Africa) Ltd v Jackson* at 292-293 typify, founded the knowing receipt liability on protection of "rights of priority in relation to property". Hence would accommodate constructive notice, ie categories (iv) and (v), as a basis for liability: see also *Westpac Banking Corporation v Savin* [1985] 2 NZLR 41.

264. We do not seek to express a view on which line carried the weight of authority, though Underhill and Hayton (at 98.29) suggest the latter did. All that needs emphasis is that English case law revealed two rationales for recipient liability – fault and property protection – and depending on which was accentuated would contrive the extent to which, if at all, constructive notice sufficed for liability to ensue: see generally the discussion in Dietrich and Ridge, at 57-62. We should add that Winterfall, as will be seen, relies upon cases in the "want of probity" line to challenge his Honour's reliance upon category (iv) notice in a recipient liability case.

265. The orthodox view in this country has been that there was a difference for knowledge/notice purposes between knowing receipt and knowing assistance, with constructive notice (encompassing both categories (iv) and (v)) sufficing for the former: see eg *Ninety Five Pty Ltd (in liq) v Banque Nationale de Paris* [1988] WAR 132 at 175-176.

266. In *Consul* Stephen J was prepared to countenance category (iv), but not category (v), notice in a knowing assistance claim: at 412. However, his Honour had earlier observed that the distinction between the two liabilities had been said to be based on the acceptance of constructive notice (a reference, seemingly, to traditional or category (v) constructive notice)) for receipt but not for assistance. Of this he commented that:

> It is not clear to me why there should exist this distinction between the case where trust property is received and dealt with by the defendant and where it is not; perhaps its origin lies in equitable doctrines of tracing, perhaps in equity's concern for the protection of equitable estates and interests in property which comes into the hands of purchasers for value.

267. We share the doubt expressed here. We do not consider that a property protection rationale for recipient liability (beyond a proprietary claim to a subsisting equitable interest in property, or its proceeds, in the third party's hands) of itself provides a sufficient justification for imposing *a personal liability to account*. That liability arises as a matter of conscience not of property. As with assistance liability, recipient liability should be seen as fault based and as making the same knowledge/notice demands as in assistance cases. We need not pursue this particular matter further because the weight of authority in this country appears now to draw no distinction between the two types of liability in this respect: but see generally, Dietrich and Ridge, above.

268. The High Court in *Farah* did not settle the knowledge/notice requirement in relation to recipient liability. Nonetheless, from at least the 1990's and in the wake of the *Baden* classification, judges had begun in recipient liability cases to generalise from what had been said both by Gibbs J (at 398) and by Stephen J (at 412) with whom Barwick CJ agreed, about the insufficiency of traditional, or category (v), constructive notice – though not of category (iv) notice – as a basis for personal liability. To allow that, as Stephen J commented, would be "to disregard equity's concern for the state of conscience of the defendant": at 412; see eg *Equiticorp Finance Ltd (in liq) v Bank of New Zealand* (1993) 32 NSWLR 50 at 103G; *Koorootang Nominees Pty Ltd v Australia and New Zealand Banking Group Ltd* at 105; *Hancock Family Memorial Foundation* at 209; *Tara Shire Council v Garner* [2002] QCA 232; [2003] 1 Qd R 556 at [66]- [72]; *Spangaro v Corporate Investment Australia Funds Management Ltd* (2003) 47 ACSR 285 at [54]-[60]; see also *United States Surgical Corporation v Hospital Products International Pty Ltd* [1983] 2 NSWLR 157 at 252-254. In *Kalls Enterprise Pty Ltd (in liq) v Baloglow* [2007] NSWCA 191; (2007) 63 ACSR 557 – a decision which post-dates *Farah* – the New South Wales Court of appeal applied *Baden's* categories (i)-(iv), but not category (v) to a knowing receipt claim. *Kalls Enterprise* in turn has been applied subsequently: see eg *Horfman v M G Kailis Pty Ltd* [2009] WASC 166; *Fodare Pty Ltd v Shearn* [2011] NSWSC 479.

269. There is, in other words, an established line of judicial decision and opinion both at first instance and in intermediate courts of appeal spanning at least 20 years adhering to the view taken in the above cited cases. We do not consider that that view is plainly wrong and should be rejected. On the contrary! Finally, for the sake of completeness, we should note we do not consider that what was said by Bryson J in *Maronis Holdings Ltd v Nippon Credit Australia Pty Ltd*[2001] NSWSC 448; (2001) 38 ACSR 404 at [469]- [478] is inconsistent with that view. Commendably, his Honour emphasised the fault based character of recipient liability: "[u]nconscionability cannot be fictionalised, and the grounds on which constructive trust liability is imposed should be real and substantial": at [471].

270. Accordingly, we do not consider the primary judge erred in law in finding that knowledge falling within category (iv) of *Baden* was sufficient for the imposition of liability for knowing receipt. We reject Ground 10 of the Murchison/Winterfall Amended Notice of Cross-Appeal.

(v) The Liabilities of Knowing Recipients and Assistants

553. The reasons informing the imposition of liability on knowing recipients or assistants and, more particularly, the nature both of their liability relative to that of the delinquent trustee or fiduciary and of the remedies available against them have been the subject of significant recent (mostly academic) debate: see eg Mitchell and Waterson, "***Remedies for Knowing Assistance***"; Ridge, "***Justifying the Remedies for Dishonest Assistance***" (2008) 124 LQR 445; Dietrich and Ridge, "'***The Receipt of What?': Questions Concerning Third Party Recipient Liability in Equity and Unjust Enrichment***" [2007] MelbULawRw 3; (2007) 31 Melb ULRev 47; Elliott and Mitchell, "***Remedies for Dishonest Assistance***" (2004) 67 MLR 16. What that debate reveals are now predictable divergences between English and Australian law (attributable in part to the prevailing restitutionary cast of mind in English law and to Australia's acceptance of the constructive trust as a remedy). To be added to this, though, are the subsisting uncertainties as to whether and/or when the liabilities of the knowing assistant or recipient are only several, or are joint and several, with those of the delinquent fiduciary or trustee.

554. We can for the most part pass the controversies by. There is relative certainty in the law we need to apply to issues raised in the appeal.

555. *First*, it is uncontroversial that the liability of a third party under either limb of *Barnes v Addy* is a personal, fault-based, one. The available remedies are not limited to an account of profits made or to pay compensation to restore the trust or for the loss occasioned by his or her wrongdoing. They can extend, as earlier noted, to the award of proprietary relief where this is appropriate: see generally *Warman*.

556. *Secondly*, where the advantage of a fiduciary's/trustee's wrongdoing accrues to a third party (whether as a knowing recipient or an assistant) and the third party is the alter ego/"nominee" (usually corporate) of the fiduciary, its liabilities will be joint and several with the fiduciary's: *Green v Bestobell* at 40; see *Gencor ACP Ltd v Dalby* (where the action was against the fiduciary for commission payments "diverted into his own creature company" and for which both the company and the fiduciary were held accountable). This principle, we note in passing, would explain why both Mr Grimaldi and Pinnacle could be held accountable for the 10 million Winterfall shares and the options.

557. *Thirdly*, where the third party is not the fiduciary's alter ego, the fiduciary and the third party will ordinarily be only severally liable for the profits each makes in consequence of the breach of fiduciary duty or breach of trust in which it participated/was a recipient: see generally *Warman* at 569. Each is not responsible for the other's profits as we earlier indicated – hence the burden of the observation of the plurality in *Michael Wilson & Partners Ltd v Nicholls* (2011) 282 ALR 685 ("Michael Wilson & Partners Ltd") at [106]:

> ... this Court has held that liability to account as a constructive trustee is imposed directly upon a person who knowingly assists in a breach of fiduciary duty. The reference to the liability of a knowing assistant as an "accessorial" liability does no more than recognise that the assistant's liability depends upon establishing, among other things, that there has been a breach of fiduciary duty by another. It follows ... that the relief that is awarded against a defaulting fiduciary and a knowing assistant will not necessarily coincide in either nature or quantum. So, for example, the claimant may seek compensation from the defaulting fiduciary (who made no profit from the default) and an account of profits from the knowing assistant (who profited from his or her own misconduct). And if an account of profits were to be sought against both the defaulting fiduciary and a knowing assistant, the two accounts would very likely differ.

See also *Glandon v Tilmunda* [2008] NSWSC 218 at [108]- [109]; *Australian Medic-Care Co Ltd v Hamilton Pharmaceutical Pty Ltd* [2009] FCA 1220; (2010) 261 ALR 501 at [681]; *Ultraframe (UK)* at [1589]-[1600]; see also Meagher, Gummow and Lehane, at [5-245] (4th ed); a contrary view obtains in Canada where there is authority suggesting that liability for profits is joint and several: see *Canada Safety Ltd v Thompson* [1951] 3 DLR 295 at 323; *D'Amore v MacDonald* (1973) 32 DLR (3d) 543 at 549; *Macdonald v Hauer* (1976) 72 DLR (3d) 110 at 130; this view has justly been criticised as "penal": see *Ultraframe (UK)* at [1597]-[1600]; see *Regal (Hastings) Ltd v Gulliver* at 390. In *United States Surgical Corporation v Hospital Products International Pty Ltd* at 817, McLelland J held that:

> ... a person who knowingly participates in a breach of fiduciary duty by another may be both (i) liable to account to the beneficiary for any benefit he has received as a result of such participation and (ii) jointly liable with the fiduciary in respect of any pecuniary liability of the fiduciary to the beneficiary as a result of the breach.

If this is to be taken as suggesting that the liability for profits is joint and several (there are later textual indications to this effect: see Meagher, Gummow and Lehane, at [5.245]), we disagree and would not apply it.

> 558. *Fourthly*, beyond the corporate alter ego cases we referred to earlier, there may well be a further exception to the above general principle. It is that, if the fiduciary and the third party assistant or recipient *act in concert* to secure a mutual benefit, be this to misappropriate trust property for a particular mutually beneficial purpose or to participate in a breach of fiduciary duty to secure a mutual advantage (eg a business opportunity), they are jointly and severally liable to the wronged beneficiary/principal to restore the trust or to account for the profits made. In *CMS Dolphin*, directors were held equally liable with the corporate vehicle they formed to take unlawful advantage of business opportunities they provided to it: "[T]he reason is that they have jointly participated in the breach of trust": at [103] emphasis added; *Green v Bestobell*; see also the facts in *Macdonald v Hauer*, above; but cf the criticism in *Ultraframe (UK)*, at [1561]-[1576]. One can readily understand why, when wrongdoers so entangle their affairs, that the law as a matter of legal policy might wish to make it their responsibility – and not a claimant's – to untangle them for accountability purposes. We need not explore this matter further, as this issue does not arise directly in the present matter. However, to anticipate matters we have applied a principle of joint and several liability to Mr Grimaldi in respect of his liability to Chameleon for the 10 million Winterfall shares and options where he and his co-director and fellow fiduciary, Mr Barnes, both acted in breach of fiduciary duty to Chameleon in misappropriating its moneys to advance the Winterfall/Iron Jack Vendors transaction from which ultimately they derived their commission. They acted in concert as directors and fiduciaries for their mutual benefit.
>
> 559. *Fifthly*, in the case of knowing receipt, where some or all of the trust property received no longer exists (or is not traceable) and so cannot be returned, the knowing recipient is obliged (no less than the wrongdoing trustee) to restore the trust fund by way of monetary compensation for the assets which have been lost: on this form of equitable compensation see *Re Dawson (decd); Union Fidelity Trustee Co Ltd v Perpetual Trustee Co Ltd* [1966] 2 NSWR 211; and see generally Mitchell and Waterson, at 132 ff. In this matter, Mr Grimaldi, Winterfall and Murchison are all exposed to such a claim in respect of the cheque advances at Chameleon's. We have not been asked to determine whether this liability is joint or several or several only. We incline to the latter view. What we wish to emphasise, though, is that Chameleon cannot obtain double recovery for its loss and the trial judge's orders are sensitive to this.

Providing *"Knowledge"* to the PwC Audit Partner

I will providing many of the evidentiary documents to the *"independent"* Audit Partner of ***PwC*** over the coming weeks so that there can be no doubt that ***PwC*** has knowledge of a *"dishonest and fraudulent design on the part of the purported trustee"*.

There is no point suing the defaulting Trustee by itself for Breach of Trust. The Directors would simply call in the receivers and the limited assets of the corporate Trustee would not even cover the

legal fees for a Breach of Trust action. The Directors of the purported Trustee operate on the principle:

"The more you steal the more difficult it is for the beneficiaries to obtain justice".

However ***PwC*** has *"deep pockets"* and so suing ***PwC*** as a *knowing assistant* to the *"dishonest and fraudulent design on the part of the purported trustee"* becomes a viable proposition.

I shall be providing the CDPP with copies of documents that I send to ***PwC*** as a means of confirming that ***PwC*** does have the request degree of ***knowledge*** in this major fraud.

The fraud itself is quite simple. That is why I have called it the ***"Count the Signatures Fraud"***, because all one has to do is count the signatures in the ***"John Elliott Era"*** purported Deeds of Variation and see that there is only one Director's signature attesting the purported Deed instead of those of a majority of the Directors of the Employer-Sponsor as required by the ***Power of Amendment*** clause – **Regulation 50**.

The ***"John Elliott Era"*** and later Deeds are also void as ***"Frauds on a Power"*** and void since the ***"Trustees of the Settlement"*** were unlawfully removed from Office on 20 December 1982 and replaced by Mr Elliott's own private corporate Trustee. This ***"Trustee de son tort"*** had no power to consent to any Deeds that would vary the terms of the trust.

The Enron Scandal

For a firm like ***PwC*** the reputational damage of being found a ***"knowing assistant"*** to a fraud is likely to be far worse that the direct compensation that would be payable.

The ***Enron Scandal*** caused the demise of Arthur Anderson.

Arthur Andersen, was accused of applying reckless standards in its audits because of a conflict of interest over the significant consulting fees generated by Enron.

Arthur Andersen was eventually vindicated in ***Arthur Andersen LLP v. United States***, 544 U.S. 696 (2005) where the United States Supreme Court unanimously overturned accounting firm Arthur Andersen's conviction of obstruction of justice in the fraudulent activities and subsequent collapse of the Enron corporation.

However the reputational damage was so great that from a high of 28,000 employees in the US and 85,000 worldwide, the firm is now down to around 200, based primarily in Chicago. Most of their attention is on handling the lawsuits and presiding over the orderly dissolution of the company.

The Provident Fund Fraud

Provided the *"pre-John Elliott Era"* Deeds of **The Provident Fund** could be concealed from the beneficiaries the theft of most of the assets of **The Provident Fund** could be concealed from the beneficiaries.

Token benefits payments were made from a *"resulting trust"* created by deducting Member Contributions at a rate of 18% of salary instead of only 5%. There Members were forced to pay to cover-up the fraud.

The Public Interest

I am sure the Director will agree that there will be much ***Public Interest*** in both the Fraud itself, given was committed by *"the usual suspects"*, and possible more so in the attempted cover-up which involves the major accounting firm of ***PricewaterhouseCoopers (PwC).***

The loss of prudent governance of this fund was a major enabler of this fraud followed by a ***"captive"*** auditor who did not protect the persons he was engaged to protect.

The audit fees from auditing the Employer-Sponsor are 10 times those for the audit fees for the audit of the employees' benefit fund so the same issue of a ***Conflict of Interests*** arises here just as it did in the ***Enron Scandal*** and the demise of Arthur Anderson.

All I am asking the ***CDPP*** is to put the documents I am sending on file in the Public Interest under CDPP Ref: HA11101073.

The ***"pre-John Elliott Era"*** Deeds have been deliberately and criminally concealed from the beneficiaries by a ***Trustee de son tort***.

Whether other ***investigative agencies*** such as ***ASIC*** or the ***Australian Crime Commission*** will now act in *good faith* and in accordance with their statutory duties will be something to be addressed at a future date.

The implications for parties such as ***PwC*** who assist with knowledge in a dishonest and fraudulent design on the part of the trustees will be the subject of ongoing correspondence with this parties to ensure there is no doubt about their ***"knowledge"*** of this fraud.

It will not be a good look for ***PwC*** to be seen to be a party to ***"the defrauding of the widows"*** amongst other victims on the raid of ***Peter Waite and Robert Barr Smith's*** **The Provident Fund.**

As Tom Petri so insightfully observed:

> ***"It is not the original scandal that gets the most people into trouble. It is the attempted cover-up"***

PricewaterhouseCoopers (PwC) should heed the advice of Tom Petri.

Yours Sincerely

Phillip Sweeney

Attachments

[Exhibit AZ] – Letter from ***PricewaterhouseCoopers*** dated 11 February 2011

[Exhibit BA] – Letter from ***PricewaterhouseCoopers*** dated 19 July 2013

[Exhibit BB] – **Section 35B** Compliance Report dated 25 October 2012

Appendix A

Statutory Reporting to *ASIC*

CORPORATIONS ACT 2001 - SECT 311

Reporting to ASIC

Contravention by individual auditor

(1) An individual auditor conducting an audit contravenes this subsection if:

(a) the auditor is aware of circumstances that:

(i) the auditor has reasonable grounds to suspect amount to a contravention of this Act; or

(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of theaudit (see subsection (6)); or

(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and

(b) if subparagraph (a)(i) applies:

(i) the contravention is a significant one; or

(ii) the contravention is not a significant one and the auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and

(c) the auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.

Penalty for Offence

Schedule 3 of the Corporations Act 2001

Item 105 [Subsection **311(1)**] 50 penalty units or imprisonment for 1 year or both

Appendix B

Statutory Reporting to *APRA*

Section 129 of the Superannuation Industry (Supervision) Act 1993

Obligations of actuaries and auditors--compliance

When section applies

(1) This section applies to a person in relation to a superannuation entity if:

(a) the person forms the opinion that it is likely **that a contravention of any of the following may have occurred, may be occurring, or may occur,** in relation to the entity:

(i) **this Act or the regulations;**

(ii) if the entity is a registrable superannuation entity--the *Financial Sector (Collection of Data) Act 2001* ;

(iii) if the entity is a registrable superannuation entity--**a provision of the *Corporations Act 2001*** listed in a subparagraph of paragraph (b) of the definition of ***regulatory provision*** in section 38A of this Act or specified in regulations made for the purposes of subparagraph (b)(xvi) of that definition, as it applies in relation to superannuation interests; and

(b) the person formed the opinion in the course of, or in connection with, the performance by the person of actuarial or audit functions under this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity.

Section does not apply if the person believes that his or her opinion is not relevant to the performance of actuarial or audit functions

(2) This section does not apply to the person if the person has an honest belief that the opinion is not relevant to the performance of those functions.

Trustee and Regulator to be told about the matter

(3) Subject to subsection (3A), the person must, immediately after forming the opinion mentioned in paragraph (1)(a):

(a) tell a trustee of the entity about the matter in writing; and

(b) if the superannuation entity is not a self managed superannuation fund and the contravention about which the person has formed the opinion mentioned in paragraph (1)(a) **is of such a nature that it may affect the interests of members or beneficiaries of the entity--tell the Regulator about the matter in writing;** and

(c) if the superannuation entity is a self managed superannuation fund and the matter is specified in the aproved form--tell the Regulator about the matter in the approved form.

Note: For specification by class, see subsection 46(3) of the *Acts Interpretation Act 1901* .

(3AA) To avoid doubt, for the purposes of paragraph (3)(c), the approved form may specify matters by reference to a class or classes of matters.

The person may not have to tell a trustee or the Regulator about the matter

(3A) The person does not have to:

(a) tell a trustee of the entity about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told a trustee of the entity about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person; or

(b) tell the Regulator about the matter if:

(i) the person has been told by another person to whom this section applies that the other person has already told the Regulator about the matter; and

(ii) the first-mentioned person has no reason to disbelieve that other person.

Penalties for misinformation

(3B) A person (the *first person*) commits an offence if:

(a) this section applies to the first person; and

(b) the first person is aware of a matter that must, under this section, be told to a trustee; and

(c) the first person tells another person to whom this section applies that the first person has told a trustee about the matter; and

(d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3C) A person (the ***first person***) commits an offence if:

(a) this section applies to the first person; and

(b) the first person is aware of a matter that must, under this section, be told to the Regulator; and

(c) the first person tells another person to whom this section applies that the first person has told the Regulator about the matter; and

(d) the first person has not done what the first person told the other person he or she had done.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

No civil liability for telling about a matter

(4) A person to whom this section applies is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of the entity, about a matter as required by this section.

Offences

(5) A person is guilty of an offence if the person contravenes subsection (3).

Penalty: 50 penalty units.

(6) A person is guilty of an offence if the person contravenes subsection (3). This is an offence of strict liability.

Penalty: 25 penalty units.

Note 1: For ***strict liability*** , see section 6.1 of the *Criminal Code* .

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Exhibit AX

pwc

Mr P Sweeney
12 Highland Way
Highton VIC
3216

17 February 2011

Dear Mr Sweeney

Foster's Group Superannuation Fund ("the Fund")

Thank you for your recent correspondence.

I have considered the matters you have raised in your letters. I appreciate these are matters of concern to you. However, I do not consider the information you have provided to PwC gives reason for the firm to revisit the audit opinions we have issued in the past in relation to the Fund. Nor do I believe a statutory reporting obligation arises in the circumstances. In any event, I note you have made both the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority aware of your concerns.

You have also requested copies of certain documents concerning the Fund from PwC's files. Requests for copies of the Fund's documents are properly directed to the Trustee. I understand you have made those requests and the Trustee has responded to you in relation to those matters.

Yours sincerely

David Coogan

Copy to: Mr Mark Johnson, Chief Executive Officer, PwC

PricewaterhouseCoopers, ABN 52 780 433 757
Darling Park Tower 2, 201 Sussex Street, GPO BOX 2650, SYDNEY NSW 1171
DX 77 Sydney, Australia
T +61 2 8266 0000, F +61 2 8266 9999, www.pwc.com.au

Exhibit BA

pwc

Private & Confidential

Mr Phillip Sweeney
12 Highland Way
Highton VIC 3216

19 July 2013

Dear Mr Sweeney

The Provident Fund

We refer to your letter of 9 July 2103 to PricewaterhouseCoopers Australia (**PwC**) in respect of the Provident Fund (ABN 60 171 679 448) (the **Fund**). Mr Sayers has asked that I respond to your letter on behalf of PwC.

A copy of your letter has been provided to Mr Sagonas as requested. PwC has considered the matters addressed in your letter and appreciates that these are matters of concern to you. PwC will continue to conduct its audit of the Fund for the year ended 30 June 2013 in accordance with applicable Australian Accounting Standards, and as required by section 35C of the *Superannuation Industry (Supervision) Act* 1993 (Cth).

Yours sincerely

Mary Waldron
Partner
Reputation, Regulation & Risk

Copy to: Luke Sayers, Chief Executive Officer
George Sagonas, Partner

PricewaterhouseCoopers, ABN 52 780 433 757
Darling Park Tower 2, 201 Sussex Street, GPO BOX 2650, SYDNEY NSW 1171
T: +61 2 8266 0000, F: +61 2 8266 9999, www.pwc.com.au

Exhibit BB

pwc

(B) Compliance

Trustee's Responsibility for Compliance

a) The superannuation entity's trustee is responsible for complying with the requirements of the SIS Act, SIS Regulations, the Reporting Standards made under s. 13 of the *Financial Sector (Collection of Data) Act 2001* (FSCODA Reporting Standards), the *Corporations Act 2001* (Corporations Act) and *Corporations Regulations 2001* (Corporations Regulations).

b) The trustee is also responsible under the following Condition of the *'Schedule – additional conditions imposed under section 29EA of the Act'* of the RSE Licence issued by APRA for:

i. Condition C5 – ensuring that all assets of the RSE, including all bank accounts are 'custodially held', as defined in the trustee's RSE licence, by the custodian.

Auditor's Responsibility

I have audited the compliance of AusBev Superannuation Fund (the 'Fund') with the requirements set out above for the year ended 30 June 2012.

My responsibility is to express a conclusion on the trustee's compliance with the requirements of the SIS Act, SIS Regulations, FSCODA Reporting Standards, Corporations Act and Corporations Regulations based on the audit. My audit has been conducted in accordance with applicable Standards on Assurance Engagements (ASAE 3100 Compliance Engagements). These Standards require that I comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance whether the trustee of the Fund has, in all material respects:

a) complied with the relevant requirements of the following provisions (to the extent applicable) of the SIS Act and SIS Regulations:

Sections 19(2), 19(3), 35A, 35C, 36, 65, 66, 67, 69-85, 86-93A, 95, 97, 98, 101, 103, 104, 105, 106, 107, 109, 117, 118, 122, 124, 125, 126K, 152, 154 and 155(2);

regulations 2.33(2), 3.10, 4.08(3), 5.08, 6.17, 7.04, 7.05, 9.09, 9.14, 9.29, 9.30, 13.14, 13.17, 13.17A; and

b) complied with the FSCODA Reporting Standards that are subject to audit (to the extent applicable); and

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 7.9.110 and 7.9.32(3); and

d) complied with the requirement to prepare the respective forms comprising the APRA Annual Return[1];

[1] The set of reporting forms made under Section 13 of the *Financial Sector (Collection of Data) Act 2001* described in the reporting requirements table to the Annual Reporting Requirements and General Instructions Guides made by APRA in July 2005.

pwc

for the year ended 30 June 2012.

My procedures with respect to SIS regulation 6.17 included testing whether amounts identified by the trustee as preserved and restricted non-preserved have been cashed or transferred only in accordance with the requirements of Part 6 of the SIS regulations. These procedures did not include testing of the calculation of the preserved and restricted non-preserved amounts beyond a broad assessment of the apparent reasonableness of the calculations.

My responsibility is also to express a conclusion on the trustee's compliance with the respective Conditions of the *'Schedule – additional conditions imposed under Section 29EA of the Act'* of the RSE Licence issued by APRA referred to under the heading Trustee's Responsibility for Compliance, above, for the year ended 30 June 2012.

My procedures included examination, on a test basis, of evidence supporting compliance with those requirements of the SIS Act, SIS Regulations, FSCODA Reporting Standards, Corporations Act and Corporations Regulations.

These tests have not been performed continuously throughout the period, were not designed to detect all instances of non-compliance, and have not covered any other provisions of the SIS Act and SIS Regulations, FSCODA Reporting Standards, Corporations Act and Corporations Regulations apart from those specified. The superannuation entity's trustee is responsible for complying with the SIS Act and SIS Regulations, FSCODA Reporting Standards, Corporations Act and Corporations Regulations.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit conclusion.

Auditor's Conclusion

In my opinion, the trustee of AusBev Superannuation Fund has complied, in all material respects with:

a) The requirements of the SIS Act and SIS Regulations, FSCODA Reporting Standards, Corporations Act and Corporations Regulations specified above for the year ended 30 June 2012; and

b) The conditions contained in Conditions C5 of the *'Schedule – additional conditions imposed under section 29EA of the Act'* of the RSE Licence issued by APRA, specified above.

PricewaterhouseCoopers

PricewaterhouseCoopers

George Sagonas
Partner

Melbourne
25 October 2012

COPY

DPP

Commonwealth Director of Public Prosecutions

Your reference:

Our reference: HA11101073

18 September 2013

Mr Phillip Sweeney
12 Highland Way
HIGHTON VIC 3216

Dear Sir

Your letter titled: Crimes of National Significance

I acknowledge receipt of your letter dated 8 September 2013 and the copy documents exhibited to it labelled AX, BA and BB.

I note that the document labelled Exhibit AX is a copy letter dated 17 February from pwc (David Coogan) to Mr P Sweeney. Your letter does not attach a copy of Exhibit AZ (letter from Pricewaterhouse Copper dated 11 February 2011 (see p14).

I note the terms of your request on p13: *"All I am asking the CDPP is to put the documents I am sending on file in the Public Interest under CDPP Ref: HA11101073."*

I thank you for your correspondence.

Yours faithfully,

Rod Jensen
for Director

HEAD OFFICE
4 Marcus Clarke Street Canberra City 2601
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Telephone (02) 6206 5666 Facsimile (02) 6206 5686