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SENATE

SELECT COMMITTEE ON SUPERANNUATION AND
FINANCIAL SERVICES

**Reference: Prudential supervision, global financial services and superannuation
guarantee charge**

THURSDAY, 15 JUNE 2000

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SENATE
SELECT COMMITTEE ON SUPERANNUATION AND FINANCIAL SERVICES

Thursday, 15 June 2000

Members: Senator Watson (*Chair*), Senator Sherry (*Deputy Chair*), Senators Allison, Chapman, Conroy, Hogg and Lightfoot

Senators in attendance: Senators Allison, Hogg, Lightfoot, Sherry and Watson

Terms of reference for the inquiry:

For inquiry into and report on:

- (a) prudential supervision and consumer protection for superannuation, banking and financial services;
- (b) the opportunities and constraints for Australia to become a centre for the provision of global financial services; and
- (c) enforcement of the Superannuation Guarantee Charge.

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Committee met at 8.41 a.m.**RUBINSTEIN, Ms Linda, Senior Industrial Officer, Australian Council of Trade Unions**

CHAIR—I declare open the Select Committee on Superannuation and Financial Services. This is the fourth public hearing which the committee is holding to its main terms of reference. The terms of reference require us to report into three separate matters: prudential supervision and consumer protection for superannuation, banking and financial services; the opportunities and constraints for Australia to become a centre for the provision of global financial services; and the enforcement of the superannuation guarantee charge.

The aim of today's hearing is to take further evidence on the issues associated with all three terms of reference. All of the witnesses who appear before the committee are protected by parliamentary privilege with respect to the evidence given before the committee. This means that you are protected from action arising from what is said, and the Senate has power to protect you from any action which disadvantages you on account of the evidence given before the committee. The committee prefers to conduct its hearings in public; however, if there are any matters that you would prefer to discuss in private, we will consider your request.

I welcome this morning Ms Linda Rubinstein, senior industrial officer of the Australian Council of Trade Unions. It is not the first time that you have appeared before the committee. We always welcome your views.

Ms Rubinstein—Once again we welcome the opportunity to appear before the committee and to give evidence. The ACTU did make a short submission dealing with two of the matters before the committee, that is, prudential supervision and consumer protection and enforcement of the superannuation guarantee charge. In the interest of brevity, I will not take you through that submission but I would like to identify six points which are the key issues dealt with in the submission.

The first of those is disclosure. It is critical in the ACTU's view that superannuation funds, particularly in a competitive market, are required to disclose all fees and charges in a transparent and easily understood way which would mean identifying all fees and charges and setting them out, both in a flat dollar form and as a percentage of contributions or of assets. Also, in respect of past performance, that those are again set out in a format which has the same dates so that the periods are comparable and again that they be after all fees and charges.

The second point is to do with commissions. It is the ACTU's view that there is no justification whatsoever for selling agents to receive commissions on compulsory SGC contributions given that the activities of the agents have nothing whatsoever to do with whether or not the contributions are made. I would also like to make the point, in light of some controversy which we have noticed in the media, that selling agents' commissions have nothing to do with percentage based fees which are the standard in some services which superannuation funds are required to make use of.

The most obvious of those is fund manager fees. Fund managers are paid on the basis of a percentage. That is something which I personally see some problems with, but it is the standard

method. As far as I am aware there is no flat based fee that actually reflects the work that goes into that. The controversy was about percentage based fees on insurance broking. I make the point that the evidence which was given in respect of a number of funds, as I understand it, is not correct in respect of most of those funds. Further material in respect of that is likely to come—not that I want to deal with the details of those particular allegations but just to clearly distinguish those kinds of fees for services with the selling agents commissions in respect of compulsory SGC.

The third point is to do with the identification of funds at risk. The ACTU is pleased to see that action is being taken against the trustees of the EPAS fund, which was a clear example of gross negligence, one would have to say at best, in respect of members' assets. It would appear that conflict of interest issues played a very large part in that. We would say that the problems with EPAS should have been identified earlier. While the ACTU supports the highest level of supervision in the interests of ensuring the proper prudential operation of funds, care has to be taken that resources do not go into essentially nitpicking with well run funds while there are such gross examples of neglect of members benefits being placed at serious risk, as in the EPAS example.

The fourth issue is that of awards and the question of why award provisions need to be retained in the interests of enforcement and consumer protection. First of all, it is an appropriate means of determining the process of fund selection because it does allow different views to be put before an independent arbiter and a process to be established to deal with the way in which funds are selected. It should be noted—and it has probably been put to this committee before—that the Industrial Relations Commission is introducing greater flexibility into the question of choice of funds, as it has recently in a building industry decision which is subsequently being followed in some other awards, that is, although the funds specified in the award would be the default fund, by agreement employers and employees can agree to some other fund. Of course, we currently have under our system certified agreements and individual Australian workplace agreements which also provide scope for employers and employees, either collectively or individually, to reach agreement about an appropriate fund. In the event of any dispute about these matters, the Industrial Relation Commission is the appropriate body to deal with and determine those disputes.

The second major issue is that when superannuation is provided for in awards, enforcement is then possible through the industrial relations system. Evidence has come to this committee about the inadequacy of enforcement of the SGC through the ATO. Under the industrial relations legislation an individual employee or their union can sue in a magistrates court for payments of any obligation under an award that has been breached. It needs to be noted that awards generally deal with other issues besides the SGC payments, such as payment during a period of workers compensation, payment for juniors, in some cases lower thresholds that would be applicable to employees to obtain the SGC payments and very significantly many awards provide for monthly payment of contributions, which is of course a critical issue for enforcement.

The fifth area is education. If \$2 million has been set aside by the ATO for an education program on these issues, I think that would have to be seen somewhat ironically in light of the \$431 million allegedly spent on the GST advertising campaign, particularly when one considers

that, as I understand it, all we can do in respect of the GST is pay it. There are not a lot of choices unless we are going to think about which prawns to buy, or some issue like that. But the question of whether you buy your salami on a plate or off a plate is not an important long-term choice that will affect your final retirement income. Superannuation, of course, is. Arguably, much greater resources need to be expended to give people the ability to make these difficult financial choices than would be the case in simply explaining a taxation system.

One can consider the low literacy rates that exist among a large proportion of the population. This morning's *Age* newspaper reports an OECD finding which has a very high proportion of Australians with very low literacy rates compared to some other countries. When one considers the complexity of the issues involved with making an informed choice, then the need for a very extensive education campaign over a very long period in order to ensure that people understand their entitlements, are in a position to sensibly make decisions concerning them—incidentally, justified whether or not choice legislation comes in, I would argue—is very important.

The final issue is enforcement. As I have said, and as I have seen in a number of the submissions made to this inquiry, there are obvious problems with enforcement with the ATO. The ATO does not seem to see its role as prosecuting; there are the large number of vouchers that are unclaimed; and there are the 30 per cent of employers who have been found to be either partially or wholly non-compliant. As I have said, the maintenance of award provisions for monthly contributions and the ability for employees to prosecute are obviously critical to effective enforcement.

In addition, there needs to be linked to this issue of education better explanations to employers and employees as to what their obligations actually are. It would appear that much of the partial non-compliance is simply employers not knowing—and employees not knowing, either—the appropriate percentage, or how to apply it, or what to apply it to. Certainly, provision of information, perhaps including something like a ready reckoner that would say, 'If the employee is being paid around \$300 a week, this is the superannuation that they should be getting,' and clearly saying what it is payable on and what it is not, would be, I think, very helpful and is something that ought to be done as a matter of priority. An issue that has come up many times before this committee is that the legislation should be amended to provide for monthly payment of contributions, and there should also be a much more effective arrears enforcement follow-up process than is the case at the moment. I thank the committee for the opportunity to give evidence.

CHAIR—You mentioned the figure of 30 per cent. That figure applies to city areas; it is another 10 per cent higher in regional areas.

Ms Rubinstein—That does not surprise me, not because of any belief that people have lower arithmetical abilities in country areas, but it is an issue about information. Quite clearly, the information that is now available to employers and employees on what their obligations are and what the taxation arrangements are is simply not available, and a campaign around this would be justifiable right now.

CHAIR—You, including others, have discussed the appropriateness or otherwise of the ATO being the regulator. In terms of the ACTU's dealings with the tax office where there are

problems with arrears, do you have any problem with them saying, ‘It’s not our responsibility; it’s covered by privacy?’

Ms Rubinstein—The ACTU does not directly deal with the ATO over these issues; unions would do that.

CHAIR—Your link is through the unions. What is the feedback that you are getting?

Ms Rubinstein—Privacy has not been raised with me as an issue with the ATO, because there are other problems which actually cut in much sooner. The first problem is because employers are not under the tax legislation required to pay until 28 July the following year and the question of arrears will often be made clear to the members and the unions through the member statements that go twice a year. There is very little satisfaction that can be gained from the ATO. I am aware of problems that have been raised with us by Jobwatch, and I know they have spoken to the ATO about some of these problems, but unions would tend to try and enforce it and a number do through the award provisions.

CHAIR—You talked about disclosure. The question is how much disclosure, and could you be a little bit more specific about what you want disclosed on these key feature statements?

Ms Rubinstein—The issue of disclosure is complex because you need to balance making something short enough and simple enough that it is actually accessible. There is no point giving people 10 pages of eight-point print that they are not going to read. So statements need to take into account various levels of literacy and language difficulties that people have, plus conceptual difficulties that people have, and they need to be very clear. Perhaps there need to be different versions, a short version and a long version, which I know is being proposed.

On the question of comparability and disclosure of fees, we would seek a standard structure which would list all of the types of fees that are applicable and then, if those were being charged, both a dollar amount and a percentage amount would be shown. We believe this is absolutely critical because, rightly or wrongly, a lot of people will make their decisions on fees and on past performance. We know that past performance is no guide to the future—that is a cliché. The other thing is that a lot of misleading information is often given in relation to past performance. As a trustee of a fund, you get it from fund managers pitching for the business. They will quite commonly either structure their comparisons or structure their results in such a way as to pick particular periods where they are shown in the best light, and they will often not say whether it is after fees and charges. Unless you think to ask, you are not comparing apples with apples. The standard format, almost like a form, that funds would have to fill in is absolutely critical, in our view.

CHAIR—There are a lot of kickbacks in the industry and you say there are certain types of expenditure where commissions are inevitable and they not be disclosed. I put to you that these might be the very areas where your kickbacks and your rebates are most rife.

Ms Rubinstein—I would not say they should not be disclosed. I think there should be total disclosure. Percentage based fees to fund managers, for example, are a charge of the fund, like an administration fee.

CHAIR—Net and gross.

Ms Rubinstein—Yes, and they should absolutely be disclosed. That is the point about the dollar amounts and the percentage amounts, because these are done in different ways. I might add that, at least as far as the industry funds are concerned, which is what those funds are, investment fees are disclosed. What I say in respect of selling agents' commissions in SGCs is that they should be banned, not disclosed, because they are completely inappropriate. But certainly all charges should be disclosed; there is no question about that.

CHAIR—In a choice environment, would industry funds be concerned that there might be parking and fund hopping? If so, if you are going to have choice, should it be limited to one or two choices a year?

Ms Rubinstein—It is going to be a matter for each fund to decide, but a lot of issues have arisen in the context of the introduction of member investment choice. I cannot say that this has turned out to be a problem as yet, but it is possible for members to effectively play the market in a couple of ways—that is, they could change, make their choices depending on where they think the market is going to go. There are issues there of timing. If a member says, 'I want to move from the shares plus option to the capital guaranteed option—

CHAIR—That is an investment choice. I am talking about fund choice.

Ms Rubinstein—They are similar issues. I am just explaining how these issues arise in the context of member investment choice. There are timing issues in terms of when the member says they want to do that and when it is actually implemented. If the market crashes in the middle you can have problems. The same issues apply with people changing funds. I tell my fund I want to change and in the meantime something happens. For example, someone might want to change to an RSA, which is capital guaranteed, from some other fund that does not offer member investment choice—which is, of course, why we say member investment choice is really the answer to choice of fund.

The other issue is funds that have reserving policies. It is possible for members to move in and out of funds in order to take advantage of distributions of reserves. That would make reserving policies more difficult if that was to become common. In the context of choice, reserving policies would become very difficult. Yet, while there is some controversy about that, there are clear benefits in those policies, and a lot of funds do it.

CHAIR—Are you in favour of reserves?

Ms Rubinstein—Personally I can see arguments in favour and against. The ACTU does not have a position. It is a matter for each fund, of course, so it is not an issue for the ACTU. But inevitably, as choice takes off and as member investment choice takes off, reserving will become more and more difficult because there simply will not be any equity in it, and people will try and play these short-term games for their advantage.

Senator SHERRY—I am sorry I was late—the plane was delayed, unfortunately. There are a couple of matters I want to touch on. We are going to Queensland for a hearing tomorrow and

we have a couple of case studies involving at least prima facie industry funds that have been very poor performers. For legal reasons I cannot go into why they are poor performers because a number of matters are before the courts. Specifically, they are the hairdressers fund, a fund called EPAS and a fund relating to the Law Society—we can give you the name later. What concerns me is that there appears prima facie to have been some malpractice in respect of these three funds. What also concerns me is that these funds do not appear to have any union representation in terms of employees and I have some suspicions because these particular funds are centred in Queensland that there seem to be more problems in the Queensland state industrial jurisdiction than anywhere else that I can detect. Do you have any knowledge of these particular funds or why there are particular problems relating to the Queensland industrial jurisdiction?

Ms Rubinstein—I referred to EPAS in a slightly different context before—

CHAIR—I have to warn you that EPAS is subject to court action, so if anything you say is seen to be prejudicial to the trial we could abort the trial. For that reason it is quite possible that our hearings in relation to EPAS in Sydney might have to be conducted in private or in camera. I would be the last one to want to be responsible for a trial being aborted.

Senator SHERRY—What I am interested in is the process of how the funds were set up. I do not want to go publicly into the issue, and we can debate this tomorrow. But why is it in Queensland that the process does not appear to have been rigorous in terms of the funds that are allowed within the awards? That is the process issue.

Ms Rubinstein—I do not believe that funds that are structured in the way that EPAS was, which is without employee representation and not just without union representation, would have been accepted by the federal Industrial Relations Commission as an award fund. What they were able to do was provide for employee-employer panels for employers with more than 50 employees. Those panels may or may not have been established in one or two employers, but most were small employers. I am not entirely clear about the Queensland industrial situation. Of course, this predates the current Queensland legislation and the current government and, I suspect, goes back to the Bjelke-Petersen legislation which did not allow the national funds to operate in Queensland and therefore required the establishment of various kinds of mirror funds. But, clearly, that is part of the difficulty. One could make the general point that if all directors of a trustee board are representing the same interests and are not drawn from employers and employees, as is the practice and is the requirement of most large national funds, that is going to be a recipe for trouble. The importance of the trustee structure and the involvement of employees and employers is absolutely critical, in our view.

Senator SHERRY—Just on the employee structure, isn't it critical that you have a bona fide set of trustees who genuinely represent the interests of employees and employers? One of the things I would contend to you, and I do not know the extent of your knowledge with EPAS, is that it was not a bona fide industry fund, even though it was given that description.

Ms Rubinstein—As far as the ACTU is concerned, the question of a representative trustee is critical to the definition of an industry fund. It is not an industry fund if it is not operated by a trustee with equal representatives of employers and employees generally because of the

difficulties of doing it in any other way, industry employee representatives being nominated by the appropriate union or unions and, in the case of employers, by the employer organisations. By being appointed by representative organisations you ensure representativeness in a way that is not the case, as I understand it, with these other funds.

Senator SHERRY—I wonder if you could take this on notice: I have mentioned three funds in Queensland that we are having a look at. I notice the hairdressers fund is actually described as the hairdressers employers fund, even though it has employees in it, which is a bit of a contradiction in terms. If possible, can you have a look at what award prescriptions, if any, and what parameters within the state of Queensland jurisdiction these particular funds have been operating in, including the way they were established? The reason I ask the ACTU is that we do not have the Queensland Trades and Labour Council appearing tomorrow. In fact, we have only one witness in respect of EPAS tomorrow, and we have a witness in respect of the other funds. What I think is central is the issue of how these funds became established. I think that, in large part, that will tell us what went wrong. There are legal issues being pursued in the courts which we cannot pursue, but I think this issue of how they got established and why they were established will give us some possible policy pointers.

Ms Rubinstein—I know that in the case of EPAS it is specified in at least one Queensland award. I can certainly find out the circumstances around that. Other circumstances may be more difficult and undoubtedly will be followed up in the legal proceedings. Any deficiencies in the industrial relations system in Queensland ought to be identified.

Senator SHERRY—Also, you referred to the legislation that was put in place by a previous state government at least 12 or 15 years ago, I think, and what sort of impact that had. Also, from my understanding, there is a choice of fund within the award and EPAS is one of the choices of fund that was promoted by at least one of the employer organisations with a consultant. We will probably get more evidence on that tomorrow. But I have some knowledge of that.

One other issue I want to ask you about is fees and charges and commissions beyond the bona fide administrative charge that is made by superannuation funds. You have made some comment about that in the ACTU submission, but I have heard an argument that whatever structural superannuation environment we end up with, particularly with commissions for selling of product, it should be prohibited in law from the commission being charged against the member contribution, that it should be a separate accounting, a separate payment. So it is a step further than just identifying through some sort of key feature statement what the commission is, what the fees and charges are, but that in that area it would be open to much more scrutiny and probably criticism if there was a prohibition on the agent simply having the commission debited against the fund member's contribution as a percentage or a flat fee or whatever. Do you have any response to that sort of proposal?

Ms Rubinstein—I am not sure I entirely understand the question because if the commission is to be paid it must be paid from the member's contribution. Where else could it be paid from?

Senator SHERRY—The issue is that it would not be paid from the member's contribution. The commission would be separately accounted to the member as a separate account that they have to pay for separately.

Ms Rubinstein—The member themselves?

Senator SHERRY—Yes.

Ms Rubinstein—I see. So if the member wanted to pay a commission they would have to write a separate check themselves; it would not come from their superannuation account?

Senator SHERRY—That is right.

Ms Rubinstein—Our view is that commissions on the SGC ought to be banned. That proposal has some merit because it is really saying to individuals, 'If you want to pay for a service which in the view of the fund or the regulators is unmerited, then you pay for it.' But we think it is inconsistent with appropriate fees from retirement benefits and therefore it will not be paid from the fund. That would be possible. I suspect what would happen in that situation is that it would get tied up with financial planning advice and that sort of thing. But, certainly, if banning it was not possible, that would be better.

Senator SHERRY—One of the problems with so-called membership choice is that the government is not proposing to ban fees. In fact, at the roundtable that we had in Sydney last year you might recall I put this question to Ms Ralph, I think, from ISFA. She made the point that people were entitled to make a dollar, to make an earning from this system. In fact, some are doing that at the moment in the current system, particularly with individual superannuation products.

Ms Rubinstein—Absolutely. With master trusts, that is the most common form of selling, and commissions are paid. If you call up one of the large insurance companies—and I have done this with a number of them—and you say, 'I'm interested in a master trust or a superannuation product,' they put you through to one of their consultants, but it is actually a commission agent. It is somebody who is very desperate to sell you something, very desperate to get your home phone number and follow you up, but most reluctant to simply send you the brochure and leave it up to you as to when you contact them. That is how it is routinely done even if you ring Colonial, AMP, Westpac or anybody like that. Given the size of master trusts, I think we can assume, except where the master trust is run through the employer, that that is how it happens. If it is run through the employer, I am sure there are commission arrangements there as well which are not disclosed.

Senator ALLISON—Can I follow up the point you make about one of the reasons for having super in awards being the dispute resolution process available through the AIRC. What sort of issues are taken to the AIRC and in what sort of numbers each year?

Ms Rubinstein—I would think there would not be a great many disputes about superannuation now. There were when superannuation was first introduced in respect of specification of fund. In a great number of awards that was resolved through the commission,

either through conciliation or in some cases through arbitration. Most of those have been resolved. As I said, the commission is taking a more facilitative, flexible approach to award provisions. It may well be, as a result of that, that there are disputes about whether or not there was agreement about the funds that are chosen through that process. I could check the numbers in recent years, but I suspect that there are not many, because of the existence of the award provisions and because the disputes have been resolved, by and large.

Senator ALLISON—What about taking entitlements to the courts—the unions pursuing claims for non-payment of SG through the courts? How many of those actions have been taken and what has been the success rate?

Ms Rubinstein—Again, I do not know how many. We would have to do a survey of unions to find that out but we could do that. I know that there is a growing trend to do this. The TCFUA—the Textile Clothing and Footwear Union—in Victoria is using the magistrates court to do that. I think that other unions are doing that as well.

Senator ALLISON—You mentioned in your submission that the ATO has budgeted \$2 million for a campaign. I must say I did not notice that in the budget papers. Do you know any more about that? Is it just a rumour or where does that come from?

Ms Rubinstein—I think there was some reference to that, possibly in one of the committee reports, but I will check where I got that figure from. I do not know that it would be in the budget papers, but it was my understanding that that was what was put aside. Irrespective of how much it is, when you think of the \$431 million on the GST it is hard to believe that anything approaching that is being contemplated; yet in our view it is what would be required.

Senator ALLISON—If \$2 million was the correct figure, what would you like to see that spent on in terms of education for superannuation? Or forget the \$2 million; what would you like to see the government spend money on in terms of educating people about super?

Ms Rubinstein—I think you would have to do it in a number of stages. You would need to have a very widespread campaign that—

Senator ALLISON—I am not talking about the choice regime; I am talking about a reflection on what a lot of people say is a grossly inadequate understanding out there in the general public.

Ms Rubinstein—I agree with that. Nevertheless, you would need to have a widespread campaign that simply alerted people to the importance of the issue. In that—and television could certainly play a role—it would say, ‘Do you know these things?’ In addition to that I think you need newspaper advertising and pamphlets that would set out in a very simple way what people’s entitlements and obligations are under superannuation legislation, what are the taxation arrangements, what are the sorts of decisions that people ought to be able to make, and also perhaps that set out different features of different funds that they could take advantage of. It would need to be something that provided an easy way for people to look at their superannuation arrangements and think about them. I think it would have to be in written form. You would use television and radio to actually alert people to these issues.

In addition to that, seminars of the type that have been conducted in relation to the GST would be valuable. If we are having at least 30 per cent partial non-compliance by employers and the ATO believes—and there is no reason not to agree with that—that most of that is in fact inadvertent and based on ignorance rather than intent, then perhaps seminars are the way to go particularly for employers to explain their entitlements but also as opportunities for employees to come to the meetings or seminars for people who are more interested. Obviously, only a small percentage of the population would do that, but when one person finds things out they often become the expert in their circle and they can actually pass on information to others, so it can be very valuable. You would not do any of that for \$2 million.

Senator ALLISON—Is it your understanding that the ATO or any other government department has a brochure which tells you what your rights are as an employee for superannuation?

Ms Rubinstein—They do have information about that but it is whether it is simple enough. For example, the Ready Reckoner type of idea is open to doubt. But they certainly do not push those through every letterbox and support them with television advertising, and that is really the point. There are brochures on all kinds of things tucked away everywhere. It is not that they do not exist. It is an issue about first alerting people to the importance of the issue and, secondly, making it really easy for them to have access to the information. It is all on the Internet. You can get it if you want it, but it involves people having to go actively to get it without it being supported by the types of alerts that I have talked about.

Senator ALLISON—What about the union's involvement in that kind of dissemination of information to employees? Do you have a program? What sorts of steps do you take to see that your members are properly informed?

Ms Rubinstein—Different unions have different levels of support for those programs, depending on their resources and the spread of their membership. Some unions take it very seriously and they also work with the superannuation funds, particularly at the time of member statements and through the arrears process, to ensure that members are receiving their entitlements. A number of industry funds in particular take the process of chasing arrears very seriously. They see unions and employer organisations as being part of that process. The employer organisations and the unions also see themselves as having a role in that. Of course, that is not the case with funds that are not involved with those employer organisations and unions.

Senator HOGG—I was involved in the arbitration process when superannuation was introduced. It seemed to me that, whilst it did have some shortcomings, nonetheless it provided a basis to sort out the good from the bad. Is there any justification for some sort of arbitration process to which people could resort to scrutinise the good from the bad now if we go to choice of fund or whatever it might be?

Ms Rubinstein—The problem of establishing a separate body, which I think is what you are talking about, is that, first of all, as far as our constitutional history is concerned, a lot of these bodies have had a very difficult time. The Industrial Relations Commission has had a very difficult time as well. It has been in relation to the IRC that the High Court has largely sorted

out its views in relation to the separation of judicial and arbitral powers. The problem with establishing another body is that, first of all, there will be those legal problems. Secondly, it is a duplication: it is unclear what its role would be and there are cost issues and issues of powers and so on. It just seems, where you have a body that is equipped to deal with those issues, that is where that ought to remain, particularly in an environment where the commission is required to and has adopted a much more facilitative approach, not just in relation to superannuation but in relation to a large number of other areas as well through the award simplification process.

Senator HOGG—Thank you very much. The other question I have arises from a submission we are going to consider later today from the Institute of Chartered Accountants of Australia. It refers to an article in the *Financial Review* of Wednesday 5 April this year ‘Super fund trustees accused of neglect’. I will quote selectively from the article:

The major cause was not fraud but fund neglect.

...

“Overall, three out of every four super fund audits threw up prudential and compliance issues of some description,” ...

This was contradicted by the representative of APRA. It went on:

The top 10 audit issues listed by Deloitte were:

1. Irregular reconciliation of assets, profit and loss items and membership.

2. Benefits incorrectly calculated.

...

5. Rules for equal representation of trustees not satisfied.

6. Untimely reporting to members.

7. Member contributions not remitted within 28 days ...

...

9. Infrequent board meetings.

...

Have you seen that article? Has the ACTU considered whether those are the problems that its affiliates are experiencing out there in the real world? And, if you have done some sort of work in this area, could you make it available to us?

Ms Rubinstein—We have not done any formal work in that area, and I would have to say that none of the industry or public sector funds that we are aware of would fall into any of those categories.

Senator HOGG—It would not be the industry funds; it would be those funds where there are union members who are having troubles.

Ms Rubinstein—It would be corporate funds, by and large. I am assuming it is not talking about excluded funds—

Senator HOGG—No—

Ms Rubinstein—which are very small and you would expect, like a lot of companies and so on, that they would not keep them. I have just been give a copy of the article, which I do not think I had seen.

Senator HOGG—You can take it on notice—it would just interest me. One of the things there ‘Rules for equal representation of trustees not satisfied’—point 5 in the bottom right-hand corner—has always been a concern of mine with many funds.

Ms Rubinstein—It seems to me that this is actually about corporate funds. What needs to be recalled is that there are a large number of small funds, many of them involving only top executives or managerial staff—in which case unions would have nothing to do with them—or they would be small corporate funds involving employees who are perhaps not in unions or not covered by awards because that would be another issue. But clearly those are very serious problems. Some of the information, such as this, and some of the questions that Senator Allison has asked do require some kind of survey of unions about these sorts of problems. That is something that the ACTU will consider doing.

CHAIR—Thank you very much, Ms Rubinstein. Thank you for your evidence and the way you have responded to questions.

[9.29 a.m.]

BYRNE, Ms Ann, Convenor, Industry Funds Forum

DARKE, Ms Anne-Marie, Executive Member, Industry Funds Forum

CHAIR—Welcome. Would you like to speak to your submission?

Ms Byrne—We would like to make some comments about our submission, which was particularly about the enforcement of the superannuation guarantee. Then we would also like to make some comments about disclosure required if members are able to make effective choices, if that is okay, as we did not mention that in our submission.

CHAIR—Yes.

Ms Byrne—In terms of the superannuation guarantee, we believe that it is prudent to increase the frequency of the requirement for employers to pay the superannuation guarantee from a yearly basis to a monthly basis. We have got a number of reasons for that in our submission. Firstly, the tax office has in fact said that three out of 10 employers are not complying with the legislation in a total way—they might be complying with it in some way. That was addressed in the previous discussion with the ACTU. Another reason is the impact that it has on a member's balance—that if you receive your contribution yearly you get less interest than if it is received monthly. It also is worth noting that those employers who do make monthly contributions are, in a sense, at a disadvantage compared with those employers who make yearly contributions. In a commercial sense, they are expending the money earlier than those that do not.

The other thing that is quite important is that if members are going to make contributions they must be paid within 28 days. If it is one of the objectives of the government to increase people's savings, people must be allowed to save effectively through their superannuation fund. If the employer is paying the superannuation contribution only yearly, it makes it very difficult for the employee to make their voluntary contribution on a regular basis because they then are unable to make that contribution to the fund where the employer is paying their superannuation guarantee.

We also think that one of the major reasons there is an enforcement issue is that the superannuation guarantee is currently only required on a yearly basis. It is not something that people clearly understand that they need to do on a monthly basis. If there were a more frequent contribution, people's understanding of how the system works would increase simply because of the fact that they would be operating within that system on a more regular basis. We also think with that the current changes to the tax system, where employers will be making more frequent payments, it should not be an additional burden to them to also make their superannuation payment to their fund. In terms of enforcement of the superannuation guarantee, we think the tax office itself requires some increase in resources for it to be able to monitor the collection of the superannuation guarantee.

Anne-Marie and I represent industry funds. All of the industry funds in the Industry Funds Forum have a very rigorous collection of arrears as it is part of our duties as trustees to make sure that members' contributions are received. However, there are employers who do not fall within our circle, so therefore they are not party to our arrears collection process—and let me say that some of our employers do not always pay regularly on time as well.

I also represent the Superannuation Trust of Australia, which is a multi-industry fund. I had a look yesterday at what our arrears collection process is and what amount of money we collect. Over the last six months, on a monthly basis, we have collected \$532,000 from employers who are at least three months in arrears. So every month of every year we collect that amount of money. I also asked CBUS, which is the fund for the construction and building industry, what they collect. On the same basis, every month, they collect \$905,000 from employers who are in arrears for greater than three months. I have not had the opportunity to go and ask all of the other funds within the Industry Funds Forum, but there is a very rigorous process within industry funds about the collecting of arrears. That benefits the members in the funds because they get their money, they receive interest on it and their insurance does not lapse. It is a great benefit to them.

Senator HOGG—If I could just stop you there, could you tell us whether they are repeat offenders that you are collecting from? Do you also know, if they are not repeat offenders, what are the causes for late payment? Did you identify that as well yesterday?

Ms Byrne—I cannot actually say whether they are repeat offenders. I can talk to you now only about STA. In terms of our arrears collection process, we do have a number of repeat offenders. They are not often repeat offenders because, in fact, the process is quite rigorous that employers realise that it is in their interests to pay their contributions on time. As for the reasons for them not making contributions, they say they have a cash flow problem at the time; they say that the superannuation guarantee legislation only says that they should pay yearly, therefore they only have to remit their contributions yearly. We say, 'But you have signed to our trust deed which requires you to pay monthly, therefore you are bound by the trust deed of the fund.' If the superannuation guarantee were on a monthly basis, I think it would, in fact, decrease the arrears that we are collecting.

Senator HOGG—Thank you.

Ms Byrne—The other thing I then looked at was what it cost the funds, and I can only give you statistics on STA. On average, that cost of arrears collections is about a quarter of a million dollars a year, and it ranges in terms of how much we are collecting. So the other members of the funds whose employers are paying regularly on time—and most of our employers do pay on time—are covering the cost of the arrears collection process. In trying to maintain our costs and keep the costs at the lowest base possible, we would prefer not to have to collect arrears.

Another issue we wanted to raise about the process with the ATO is that we believe the ATO, as well as being given extra resources, has to be given some greater discretion when it is actually dealing with the collection of the SG. There are times when employers make honest mistakes. We have had to deal with them at STA and Anne-Marie has had to deal with them in her fund; all funds have to deal with them. An employer makes a mistake in some way. They

may have miscalculated the contribution level, they may have not realised that someone actually left earlier or later, and they have actually made an honest mistake in the payment of their contributions.

They then make that payment to the super fund, realising they have made that mistake, and assume that they are not going to get caught up in the superannuation guarantee enforcement. However, they are. The tax office has no discretion with the employer. They have now made the payment to the super fund and then they also have to make that payment to the tax office. So, in fact, employers are penalised for making what is an honest mistake by having to make the payment twice. As super funds, it is very difficult for us to give money back once it has been put in, because once we receive the money it is, in fact, the members' money and it is put in trust with us to hold in the members' accounts.

Therefore, we have to go through an extraordinarily lengthy process to try to reconcile between the member and the employer that particular payment. The process in STA is that, if the member agrees to remit that contribution to the employer, we will pay it. If the member does not agree, we will not, because by the time it reaches us it is, in fact, their money. So we think the ATO should be given some discretion so that, if at times an employer does make an honest mistake, they are able to say, 'You are not liable for the superannuation guarantee charge because you have made that contribution to the superannuation fund.' They may be able to say to them, 'You are still liable, though, to pay the interest that the member has missed out on and make that payment to the fund.'

There are two other comments we want to make in terms of the superannuation guarantee. From our experience, we believe that there is a small number of employers who do not want to pay the superannuation guarantee. Also, for whatever reason, they probably do not pay a lot of other requirements that they are meant to pay. These employers seek funds that do not have an arrears collection process. It would be to their advantage to say to their employees, 'We want you to go into this fund. It only allows us to make yearly contributions.' They would then choose against a fund that actually has a very rigorous arrears collection process. We believe that is not something that is intended but is a disadvantage to those funds which do take up their trustee duties to actually ensure that the members' interests are protected.

The last comment about the superannuation guarantee is that even though superannuation is a priority in the liquidation of companies, this is not a widely known fact. We would think there should be some promotion and publicity about the fact that it is one of the first items on the list that is required for payment. We have had many examples where our arrears collection company must go to the liquidator and say, 'Superannuation payments must be paid with the same level of wages and salaries.' We think that needs to be given greater publicity because it is often inadvertently put down the list when there is some sort of administration of a company going on. They were the comments we wanted to make about the enforcement of the superannuation guarantee. Do committee members want to ask us questions about that now or wait until we make our comments about disclosure?

CHAIR—Finish your evidence.

Ms Byrne—We have not made any comments in our written submission about disclosure but we realise that you are looking at the consumer protection issues in terms of superannuation. Our comments are related to the fact that, if there is to be choice of fund, members must be given adequate information to allow them to make an informed choice. We have an example here. Are we allowed to table it?

CHAIR—Yes.

Ms Byrne—We have more than sufficient copies for everybody.

CHAIR—Is it the wish of the committee that the Industry Funds Forum disclosure model be accepted? There being no objection, it is so ordered.

Ms Byrne—It gives the member a clear example by which they can compare funds. If you were an industry fund and if this was the requirement, the member would say, ‘Okay, what is my salary? What are my contributions? What is my current account balance? What fees do you charge?’ We have listed there the potential of all the fees of the administration trustee, fund manager and other. Then there is a calculator, and it would be a requirement for the fund who was talking to the member to do the calculation for them. They would do it on two levels of interest rates or it could be an interest rate that was designated by APRA, in that they do at the moment designate an interest rate if you are in fact developing a model. So you would show the member what they would get in their superannuation if there were, in fact, no fees. You would show the member what they would get if there was six per cent for this fund, you would show them no fees and eight per cent. Then the members could use that model for the range of superannuation funds. So if they wanted to compare an industry fund with a master trust or some other retail product, they could do so.

CHAIR—Why don’t you just have it after fees and charges, because people are really interested in the amount that is going to be credited to their account. They are not interested in—

Ms Byrne—I think it is interesting for people to realise what their contribution would have been with no fees so that they can see the real impact from no fees to fees.

CHAIR—A lot of people have trouble even getting to the stage of what is credited to their account. I agree that all these things have got to be charged, but I think this gross investment return has got to have a lesser priority. Wouldn’t you agree?

Ms Byrne—What would come out in the yearly basis, the 5/10, would in fact be what would be in their account at the end of that year. It would take into account their salary, their contributions for the year, so that at the end of five years they would be able to see what was in their account at the end of 10 years and to 55, to 60 and to 65. So it would show what their account balance would be. ‘XXX’ is one particular fund and you could have a range of funds. So it would show them what was in their account at the end of that period.

Ms Darke—Which is actually after the fees and charges. I think one of the difficulties with disclosure documents at the moment, key feature statements, is that a number of these fees and

charges are quite hidden and it is difficult for people who are not financially literate to identify where they are. So we need a simplified method for funds to be able to show what fees are charged in which areas, and what impact that has on the benefit. It should also have the capacity to compare between percentage based fees and flat dollar based fees, because that is always very difficult for people to estimate. If you ask people what fee they prefer to have charged on a given amount, very often they get it wrong, when they look at the impact at retirement.

Ms Byrne—It is to try to show people what they will have in their retirement with the impact of fees being taken into account. We are happy to do some work on our model, but we think it is useful to have a model that is used for all funds, so that if people are making comparisons, they in fact can make accurate comparisons about the effect on their retirement income, remembering, of course, that their superannuation is going to be in their account until they are 55, 60 or 65 depending on their current age. They need to know what they are going to get at the end.

Ms Darke—We could follow up with ones that are filled in, if that is of assistance, and compare two actual funds that will show those differences.

Senator LIGHTFOOT—You mentioned something that you also had an interest in, Ms Byrne. Was it the Super Funds of Australia or something like that?

Ms Byrne—I am the fund secretary of Superannuation Trust of Australia.

Senator LIGHTFOOT—What is the role of that particular organisation?

Ms Byrne—Superannuation Trust of Australia is a multi-industry fund and 80 per cent of our members are within the manufacturing sector.

Senator LIGHTFOOT—How does that differ from Superannuation Trust of Australia?

Ms Byrne—Sorry, that was the Superannuation Trust of Australia.

Senator LIGHTFOOT—How does that differ from the Industry Funds Forum?

Ms Byrne—The Industry Funds Forum is a group of 23 industry funds that meet regularly to talk about issues of common interest and, I suppose, to promote to bodies like this, the views of industry funds.

Senator LIGHTFOOT—What predominantly are the organisations that form the IFF? They are manufacturing industries, yes, but what—

Ms Byrne—The funds that are represented are in fact STA which is the manufacturing fund, HESTA which is the Health Employees Superannuation Trust, the construction industry fund, the retail industry fund, the clerical industry fund, Care, Sunsuper which is the Queensland fund, Statewide, Westscheme, TWU super, and ASSET which is the New South Wales based fund.

Senator LIGHTFOOT—So TWU is an acronym for?

Ms Byrne—The transport workers superannuation fund. I am trying to remember; I have about 10 now.

Senator HOGG—I think you are doing very well.

Ms Byrne—It is a whole range. To be a member of the Industry Funds Forum, you must, in fact, have equal representatives of employer and employees on your board.

Senator LIGHTFOOT—It is a bit of a loose description, ‘Industry Funds Forum’, is it? It is a non-specific description of the organisation?

Ms Byrne—Yes. It is a group of 23 industry funds.

Senator LIGHTFOOT—Unions?

Ms Byrne—No, it is the chief executives of the 23 superannuation funds.

Senator LIGHTFOOT—Where does the Transport Workers Union come into it?

Ms Byrne—Their fund secretary is a member of the Industry Funds Forum.

Ms Darke—It is the transport workers superannuation fund.

Senator LIGHTFOOT—Do you meet with the ACTU to establish policy?

Ms Byrne—The Industry Funds Forum, no.

Senator LIGHTFOOT—Do you meet with that in the superannuation trust, in your other capacity?

Ms Byrne—No. Superannuation Trust of Australia itself establishes its own policies and may in fact sometimes agree or disagree with ACTU policy, or may sometimes agree or disagree with other policies as well. We do not meet with the ACTU to establish—

Senator LIGHTFOOT—Do you have a process that settles any of these disputes before they amount to something that is insurmountable, or something serious?

Ms Byrne—The fund itself does not enter into any dispute resolution. That is in fact something for the industrial parties, which would be the relevant unions for the organisation and their employer association.

Senator LIGHTFOOT—Does the Industry Funds Forum have the imprimatur of the ACTU or the union movement? Is it something that they endorse, are uninterested in or do not have a view on?

Ms Byrne—I would say that they do not necessarily have a view. They would say it was a good idea that the people who work for the superannuation funds—the 23 industry funds—get together to discuss issues to do with industry funds and superannuation generally.

Senator LIGHTFOOT—But, as you say, you are literally guessing this; you do not know that.

Ms Byrne—No, because we do not have any direct interaction with them.

Senator LIGHTFOOT—That is pretty clear. What type of employer defaults? I imagine that they are at the lower end of the employee scale. Is that correct? Is there a particular type of employer that defaults?

Ms Byrne—They are normally smaller employers, but sometimes quite large employers default. We have had employers who employ 1,000 of our members default.

Senator LIGHTFOOT—But what is the rule of thumb with respect to defaults?

Ms Byrne—The general rule is that they are smaller employers. In talking with CBUS, the general rule is that it is their smaller employers who default, and for STA it is our smaller employers.

Senator LIGHTFOOT—Can you give the committee some idea in numbers that these companies that default employ?

Ms Byrne—The numbers that they employ?

Senator LIGHTFOOT—Yes, the defaulters.

Ms Byrne—We can only give you some indication. If you like, I can get some greater information on that because we can only tell you the number of STA members in their fund.

Senator LIGHTFOOT—Take that on notice, Ms Byrne. I am quite happy for you to take that on notice.

Ms Byrne—All right.

Senator LIGHTFOOT—What about the recidivistic aspect of defaulters? Do you have the same defaulters pop up on your computer defaulting? If so, what type are they? Can you put a description on them? Are they in the building industry? Are they in the manufacturing industry? Are they are in the clerical industry. What type of defaulters are they?

Ms Byrne—I think they are across all industries. I can actually say that all of the industry funds in the Industry Funds Forum have an arrears collection process that captures employers across all industries. Within the fund that I work for they are in the manufacturing sector.

Senator LIGHTFOOT—Is that because your funds are largely represented in Victoria and there is a big manufacturing industry in Victoria?

Ms Byrne—No.

Senator LIGHTFOOT—There is a big manufacturing industry in Victoria.

Ms Darke—I think there might be a misunderstanding that Anne is referring to manufacturing across the board. For each individual fund which covers different industries they have employers who are in arrears on an ongoing basis—a small number and, I guess, numbers that fall in and out of the process. So it goes across all industries. To get an idea of any industries that predominate, that information would be best sought from the ATO because they have put projects in place in relation to their enforcement procedures. I think they have about 20 projects. They did a presentation to us. That will give you an indication of particular hot spots that the ATO identified. We can talk particularly about our funds which cover specific industries, but we do not have any information across the board of the 23 funds to say, ‘Well, it is this industry.’

Senator LIGHTFOOT—Let us talk about the specific industries, then, Ms Darke.

Ms Darke—Sure.

Senator LIGHTFOOT—What are the industries that are specific to your organisation in a majority sense? What are your biggest contributors?

Ms Byrne—I can talk specifically now about the Superannuation Trust of Australia, not the Industry Funds Forum. The Superannuation Trust of Australia represents employers and members in manufacturing, and that is in its broader sense.

Senator LIGHTFOOT—What sort of manufacturing? What is the major group of manufacturing—clothing, textiles, engineering?

Ms Byrne—No, engineering, metal manufacturing, food, farming, aerospace, defence support—

Senator LIGHTFOOT—When you say ‘farming’, ‘manufacturing,’ you do not literally mean that. What do you mean by ‘farming’?

Ms Byrne—In farming we have a range of dairy farmers, and fruit pickers where there are casual workers, and STA also covers some people within the entertainment sector.

Senator LIGHTFOOT—What happens with the fruit pickers, for instance? I would put the grape pickers in the wine industry in that category for the purpose of the committee. What happens with those? They are largely itinerant workers. Do you have defaulters in that aspect of your industry too? If you do, what is the difference between, say, an employer of itinerant workers and, say, the metals industry where they are non-itinerant workers and they are easily identifiable, but not so with the fruit pickers and the grape pickers?

Ms Byrne—I can give you some specific examples about some of the more itinerant workers. We have identified those employers who in fact have itinerant workers because of the seasonal nature of the employment in their fund, and we work with those employers to ensure that when they take those people on they actually collect all the relevant details that are required from the employees in terms of their names and addresses. We work with them over the period of the season, whether for some seasons it might be a month or three months, so that they can satisfy their obligations.

For those organisations, they have approached us from their own organisational bodies so that they can actually work with that in a more effective manner. They realise that if they are picking cherries or strawberries in January or February and they then wait to make their payment of contributions until the end of July, they will not have the relevant data about the members and would be unable to make their contributions. Therefore, I would not say within STA itself that the itinerant employers are necessarily the ones that have a default. I cannot speak in general about that. In terms of the other employers, there are employers who repeatedly do not pay contributions. There are those that get into financial difficulties for whatever reason and see that non-payment of superannuation is the first thing that they can use to actually help their cash flow.

Senator LIGHTFOOT—Let us get back to the itinerant people. Where there is only a month in some seasons, what happens to the collections of the superannuation that is collected by the employer and the employee shifts on before he or she has any record of that contribution? I must say that I am coming from a position of ignorance with respect to this part of our industry. What is the process of forwarding that superannuation to the employee? Are there some checks and balances that let you satisfy yourself that every endeavour is made for that contribution to get to the employee?

Ms Byrne—I can talk specifically about that. When I say that we work with the itinerant employers, that means that my staff go out, when that employer is engaging people or employing people for the first time—

Senator LIGHTFOOT—For the first time that season?

Ms Byrne—Yes, and ensures that they have their records about their superannuation. If that person is already in STA, we will provide them with the member number of that member.

Senator LIGHTFOOT—Are you a kind of a policeman?

Ms Byrne—No, we are not a policeman. We are assisting the employer to pay their obligations, which is the superannuation guarantee.

Senator LIGHTFOOT—Do you knock on the door and say, ‘I am from the IFF, I am here to help you’? Is that the sort of thing?

Ms Byrne—No. They contact us and ask us to come and help them because they want to be able to pay the contribution.

Senator LIGHTFOOT—They ring you, you do not pick them out?

Senator HOGG—You got the story right, Ross.

Ms Byrne—This is a group who want to actually make their contributions correctly. If we have the details of the member, we then write to the member and they are on our process of actually receiving all of the information from STA so they actually know that they are in the fund.

Senator LIGHTFOOT—But what if the member does not want to ring you up and say, ‘I want your assistance’? What checks and balances are there along the way in regard to those who calculate that they are not going to pay their superannuation that they have collected, knowing that it is not going to get back to the itinerant worker who is going to be in Queensland picking pineapples next month? What happens to that? Where does it go? Where are the checks and balances?

Ms Byrne—I am not sure, and that is one of the reasons why we believe that the ATO must actually have greater resources to be able to police those sorts of instances. We as super funds can only collect the arrears of employers who have agreed to participate in our funds. I do believe there are, though, employers who do not participate, and that is the role—

Senator LIGHTFOOT—In an illegal sense you are talking about?

Ms Byrne—The ATO say in their own submissions, and submissions to us, that there are 30 per cent of employers who do not fully comply. We believe that it is the role of the ATO to monitor, collect and ensure that those employers who are not complying with the relevant requirements do.

Senator LIGHTFOOT—Are you saying that the ATO, even though it is within their responsibility to do that, are simply not doing that?

Ms Byrne—I think they do not have enough resources to actually go out to monitor every employer. In our discussions with the ATO, they say they do a range of surveys to try to identify industry sectors which may, in fact, be at fault. Then they concentrate on those industry sectors. Certainly, from my understanding—and you can ask the ATO this—they do not have a process by which they check every employer.

Senator LIGHTFOOT—What happens to the money that is collected from these recalcitrants and that is not forwarded to the employees because of their itinerant nature? In effect, would not some employers take advantage of that situation?

Ms Byrne—I presume the employer keeps the money.

Ms Darke—The process of checks and balances is at different points and is the responsibility of different entities. From the funds’ perspective, we rely on the contribution returns that the employer sends in. An employer lists the employees for that month and what the particular amounts are. If we have—

Senator LIGHTFOOT—Hang on just a minute, so you do not get too far ahead of me—I am only a simple country boy. So the employer takes out the superannuation contribution. That is shown in his or her books. The employee shifts on to Queensland to pick pineapples. If you inspected the books, it would appear as if the superannuation contribution had clearly been paid but in fact it is still in the employer's bank account and stays there. Is that what you are saying? Is that possible? Does that go on?

Ms Byrne—I actually do not know whether that is possible but I would assume that it is possible. But I would think that, when you had your tax audit, you would have to provide some evidence to the tax office that you actually sent that money somewhere.

Senator LIGHTFOOT—So a postage receipt that says, 'I posted this on to Toowoomba care of Mr Smith at the post office.'

Ms Byrne—It is my understanding that the tax office have much more rigorous procedures than that. I do not know what they are but I think they would have, to provide some greater evidence that you have made that payment to a superannuation fund.

Senator LIGHTFOOT—So you would need some greater evidence than that. You have no idea what that evidence is?

Ms Darke—I would have thought that, if an employer has on their books a number of employees for which they have to pay a range of taxes—payroll taxes and whatever—when the audit processes occur that would show up. Obviously, those employers that might bypass that system might be a bit harder for the ATO to identify. What we are saying is that the ATO, as a matter of course, do not go through every single employer in the country to make sure that all of that is done. They also act on the basis of information that has to be provided legally by employers, so you will get some that will slip through that process. From the funds' perspective, if we know that there is an employee on the books, that is when those employers fall into our arrears process if that money is not received.

Senator LIGHTFOOT—But you do not know all employers, do you? All employers do not belong to your organisation, so it is possible that some of the superannuation funds that should be forwarded are not. We have established that. Given the size of the itinerant work force in parts of Australia—particularly Shepparton and other parts of Victoria, New South Wales and every state—those contributions could, in aggregate, amount to tens of millions of dollars that are not getting back to the employees.

Ms Byrne—That could be right.

Senator LIGHTFOOT—Is that fair enough?

Ms Darke—I could not make a comment because I do not have that information, but I think that the general issue of just casual work—it is not necessarily itinerant workers—would fall into that process. With the current levels of moneys that have to be earned before the SG is paid, there are schemes devised so that moneys do not have to be paid if you structure things in certain ways. So some casual workers are clearly disadvantaged by the current system.

Senator LIGHTFOOT—Just on that same subject: the portability of superannuation funds for itinerant workers is really irrelevant when it comes down to workers who shift from Shepparton to the Hunter Valley and from the Hunter Valley up to Toowoomba, Mackay or somewhere like that. Is there not an anomaly between taking that superannuation with you in a documented sense and the inability of that itinerant worker to establish a foolproof portability of those funds?

Ms Darke—I do not think portability is the issue because, particularly with our funds, the worker can maintain that fund through a range of employers.

Senator LIGHTFOOT—A single fund?

Ms Darke—Yes.

Senator LIGHTFOOT—Just a single fund?

Ms Darke—That is not difficult for the employee to do. If they understand their entitlements and they are in a super fund from the start and they move around different employers, they can ensure that appropriate payments are made and they can be made to the same fund, if that is the issue about portability.

Senator LIGHTFOOT—Are you saying that the fund that is established here through your organisation can also benefit the same worker who is in that fund by virtue of the employer being able to take advantage of that in Toowoomba in Queensland?

Ms Byrne—Yes. There are national industry funds that have employers across Australia. We have workers and employers in every state. We have people who leave one of our employers and go to their next employer who, if they are in one of our particular industries, might already pay into STA. All they have to do is give their employer the membership number and they get onto the new employer's list if they have worked in any of the other industries. That is one of the things that industry funds themselves have made available to people, and that is portability. Previously, if you left an employer and you were just tied to that employer fund you could not take it with you, you had to start up another fund. With industry funds you can take it wherever you go.

Senator LIGHTFOOT—Give the committee a generic idea of how many of your 150,000, or thereabouts, employers are domiciled in Victoria and other states? Just a generic figure will do, or perhaps you can take it on notice and give us a more accurate figure.

Ms Byrne—Our employers or employees?

Senator LIGHTFOOT—Employers.

Ms Darke—We would have to come back to you if you wanted it from the 23 funds.

Ms Byrne—Do you want it from the 23 funds?

Senator LIGHTFOOT—Yes.

Ms Darke—HESTA, for example, has 14,000 employers across Australia. The majority of those are in Victoria and New South Wales.

Senator LIGHTFOOT—How many of your employer participants in the IFF are domiciled in Victoria?

Senator HOGG—If I could I just intervene there, I think that is a very awkward question because if you deal with some industries which have national employers they may well have their headquarters in Victoria or in Sydney but then have branches right throughout Australia. If you take the retail industry, the head office of Coles Myer is here in Victoria, yet there are Coles Myer stores right throughout Australia.

Senator LIGHTFOOT—All I want to establish is how important you are nationally in terms of your balance across Australia. Are you Victoriacentric?

Ms Byrne—No, we are not. I can tell you about STA. It is not Victoriacentric. STA has 13,500 employers, of which 4,000 are in Victoria and another 4,000 would be in New South Wales. The next largest state is Queensland, followed by South Australia, Western Australia and Tasmania. So it is almost a reflection of the working people.

Senator LIGHTFOOT—Is it about per capita?

Ms Byrne—Yes—about whatever the population is. The national industry funds would have that representation. STA has some 45,000 members in Queensland.

Senator LIGHTFOOT—So it runs in terms of population: New South Wales first?

Ms Byrne—It is our largest.

Senator LIGHTFOOT—Victoria second, Queensland third.

Ms Byrne—South Australia.

Senator LIGHTFOOT—Western Australia is larger on a per capita basis than South Australia, but I accept that. That gives us some idea.

Ms Darke—Within the Industry Funds Forum, though, some of the 23 funds are state based industry funds. The forum covers industry funds that go across the country, but some of them are state based. ASSET, for example, is a New South Wales fund. Sunsuper is a Queensland fund, Statewide is in South Australia and Westscheme—

Senator HOGG—And Sunsuper is a multi-industry fund?

Ms Darke—Yes.

Senator LIGHTFOOT—What of your employers: how many of those pay on a monthly basis now for their own particular comfort about not being caught in arrears—any, many?

Ms Byrne—All of our employers pay on a monthly basis, as it is a requirement of our trust deed.

Senator LIGHTFOOT—Which company?

Ms Byrne—Superannuation Trust of Australia. It would be the requirement of all of the trustees of the members of the Industry Funds Forum that they pay on a monthly basis.

Senator LIGHTFOOT—If it was a legislative responsibility for employers throughout the Commonwealth to submit funds on a monthly basis to the ATO, that would not be difficult at all for your members?

Ms Byrne—No.

Ms Darke—What it would remove, as we mentioned previously, is the need for us to have such an extensive arrears process and it would remove the need of the ATO to do their current follow-ups. The reason why we have got that arrears process is because the legislation does not back up what is in our trust deed.

Senator LIGHTFOOT—Yes, I understand that. Thank you very much for your answers.

Senator ALLISON—Just to pursue that point a little further, the industry bodies suggest that, whilst quarterly might be manageable, monthly is not, and that it is partly the fruit pickers and those who are employed on a casual basis that cause the problem. Can you see any reason why any employer should argue for quarterly rather than monthly?

Ms Darke—If they did, I guess, putting on an employer hat, it would be on a commercial basis. Obviously, if the money is remitted on a less frequent basis, if it can accrue interest in the employer's business it is obviously to their advantage.

Senator ALLISON—Can I argue that it might be difficult for them to know on a monthly basis what superannuation is payable?

Ms Byrne—I would say not, because they calculate people's wages on a weekly basis and often pay them on a weekly basis, or a fortnightly basis, so they would know exactly from that what the superannuation payment would do. I am sure most payroll systems in that process also automatically calculate what the superannuation is from the salary or wages on a weekly basis.

Ms Darke—I would have to say in relation to casual workers in particular that it would be easier to do on a monthly basis than a quarterly basis, because if someone has worked for you during a particular month and then they move on, in two months time when you come to do your quarterly evaluation obviously you might not have some details that you need of that person and they are gone. We often have that difficulty when we are allocating money if employers do not have all the details that we need for that to occur. So I think that that is

actually an argument in favour of monthly—that while the people are there working for you that is able to be calculated.

Senator ALLISON—Perhaps it is anticipating legislation which has been mooted, which would see SG payments not made for salaries or income under a certain level perhaps as the answer.

Ms Byrne—That is already in the superannuation guarantee legislation, that if you earn less than \$450—

Senator ALLISON—Is that the argument then?

Ms Byrne—If people are covered by awards, they are required to pay from the first dollar. My personal view is that I think it would be a great disadvantage to those people who earn less than \$450 not to receive superannuation. They are already in a low wage bracket, and for them also to miss out on superannuation would be a travesty for their potential retirement income.

Senator ALLISON—The disclosure model you passed around does not show insurance as being on this chart. Was that an omission, or is this just about fees?

Ms Byrne—It is just about the cost of actually running your superannuation account from an administration basis, and insurance is very different for a range of funds. Most funds provide death and total and permanent disablement insurance, but now funds are also offering options of income protection and a range of other services. That would be disclosed in what is the range of services that the fund provides, but this was simply about what it costs to run your fund.

Ms Darke—The other issue with that, from the industry funds' perspective, is that the funds that we would be compared with do not offer insurance. So, if you are introducing that in one sector of the industry and perhaps not in another sector of the industry, that is going to impact on the retirement income at the end, but it does not take into account the benefits that are achieved through the insurance along the way. So it is an additional factor that would be difficult to put into this sort of model. It may be something that needs to be as an addition.

Senator ALLISON—Do you ever see a situation where insurance might be offered as an option and therefore a cost attributed to it, a kind of fee for insurance cover?

Ms Byrne—Do you mean as an option rather than a compulsory aspect?

Senator ALLISON—Yes.

Ms Darke—From our funds now, members can opt out of insurance. If they do not want to have insurance they just notify us in writing and insurance is not covered. We have members in that situation who opt out.

Senator ALLISON—Do they understand, if I can use it in purely dollar terms, what the value of that is to their annual or final payout?

Ms Darke—They may have done those calculations themselves. The general—

Senator ALLISON—What information do you give them about it?

Ms Darke—In terms of the impact on their final benefit—

Ms Byrne—They would understand that by not having insurance they are not going to be covered for any total and permanent disablement and they are not going to get their death cover. They know, therefore, that when they leave the fund or if something happens to them, they would only get their account balance, they would not then get their insured component. They would understand that if they opted out. However, if it were made voluntary it would increase the cost of insurance for all members.

Senator ALLISON—I understand that argument, but what I am trying to get at is that you, Ms Darke, must indicate that there may be some advantage, that if people are prepared to give up on insurance—

Ms Darke—Absolutely.

Senator ALLISON—there is some dollar advantage. How do you describe that? What do you say is the dollar advantage?

Ms Byrne—We do not have information that goes directly to our members in terms of the dollar advantage of having insurance. We certainly go through the process of the advantage of having insurance and the impact that it can have if you do not have it, probably more particularly, on the individual. But we do not have charts, if that is what you are saying, that say if you have insurance all the way through your time with us, this is the impact at the end if you do not have to use it—if that is the question.

Senator ALLISON—My question is on the dollar advantage in not having insurance. If somebody opts out of insurance, what advantage does that give them?

Ms Byrne—That gives them the advantage of having that dollar put into their retirement.

Senator ALLISON—Do you tell them how much it is?

Ms Byrne—They would know whatever the cost of the insurance would be, whether it was a dollar or \$1.50 a week. They would know that. That is not coming out of their account.

Ms Darke—We do not go back and say, ‘Do you realise by opting out of this that at the end this is how much extra you are going to have?’ We do not do that.

Senator ALLISON—But you do tell them how much the monthly contributions will benefit from not being in insurance?

Ms Byrne—Yes.

Ms Darke—Yes.

CHAIR—You do realise that income protection attracts the GST, as opposed to life insurance?

Ms Darke—Yes. On that, in the GST legislation there is one clause—and if I think hard I will remember which one it is—that there is some income protection or disability income benefit policies that do not attract the GST. There are some conditions that attract to that. I know that because our fund offers a disability income product and it does not attract the GST. It is not a blanket provision.

CHAIR—Thank you.

Senator HOGG—I have three questions, and the first relates to the issue of the collection of arrears. You may well have this readily available but not with you today. Are you able to give us the annual amount that is recovered by each of the individual funds? Could you list them?

Ms Byrne—No, I cannot give it to you today but I would be happy to ask all of the Industry Funds Forum to provide that to you.

Senator HOGG—I would like to know the annual amount, the actual cost to each fund to collect those arrears, and the number of people who are affected in each of those funds so that we can get some idea of the size of the problem.

The second question I wanted to raise with you is in respect of your claim for the ATO to have greater discretion where employers make honest mistakes. What is the level of the incidence of this happening? Is it one, two, five, 10 or 50 cases per year? If you can give us some idea, and again take this on notice, of the number of instances of this by fund per year, that would be helpful. Then, can you give us a broad analysis—I do not want something that is causing a great deal of work—as to what are the actual causes of the problem?

Ms Byrne—I can give you some anecdotal evidence now that STA has had four such examples in the last year leading up, so therefore it is not—

Senator HOGG—That is the sort of information I am looking for. If it is something that is not of mammoth proportions then that is handy to know.

Ms Darke—HESTA's experience would be the same, in the same numbers.

Senator HOGG—All right, could you take that on notice. You spoke of a small number of employers who do not want to pay at all, but they seek funds where there are no arrears processes, the 12 months, et cetera. Do you have evidence that in those types of funds the employees are subject to coercion, so that if we got into a model where there was a so-called choice of fund the employees would not be subject to choice of funds at all but to the same coercion that they are probably subjected to now? If you have got evidence to that effect that would be helpful for the committee.

Senator SHERRY—I will just put this on notice and you may be able to tell me straightaway. There is a particular problem in Queensland and you would have heard my questions on this to Linda Rubinstein from the ACTU. Are the hairdressers, the Queensland Law Society and the EPAS funds members?

Ms Byrne—No.

Senator SHERRY—Do you have any information on them so you might be able to throw some light on these particular problems?

Ms Byrne—No.

Senator SHERRY—Just one other point that may have been covered: in the so-called choice environment—I refer to it as a deregulated retail environment—where you effectively have to fight for members, will your costs go up or down?

Ms Byrne—If we are having to do what you call ‘fight’ for members our costs can only go up because we will be expending more on marketing to members to maintain them in the fund and to seek new members.

Senator SHERRY—You might have some more detail to give us on what you think the impact would be.

Ms Byrne—Right.

CHAIR—Thanks, Ms Byrne and Ms Darke. I appreciate the evidence you have given. I would like to have some time to go through this form with you later on.

Ms Byrne—Would you like us to provide a couple of examples? We could provide an example of what it would look like if it was one of our funds and another fund.

CHAIR—It just has some overtones of some life company type information which can be a bit misleading. That is the concern that I have with it. That is why I would like to discuss it with you. I think the intent is good, it just needs some refinement. I would appreciate the opportunity to discuss it with you some time.

Ms Byrne—Okay.

[10.24 a.m.]

BROOKES, Mr Nicholas, Secretary, Corporate Super Association

CERCHE, Mr Mark Nicholas, Chairman, Corporate Super Association

CHAIR—Welcome. I understand this is the first time as an association that you have appeared before the committee. Thank you very much for your submission. Would you like to make an opening statement referring to your submission or highlighting matters within the submission?

Mr Cerche—I think I can do that briefly. We are a corporate superannuation association and we represent 35 of the largest corporate superannuation funds in Australia. Together we have more than 500,000 members and we control more than \$40 billion of assets. We have members in both Melbourne and Sydney, and in Western Australia. We are a not-for-profit organisation. Not one of our funds is a public offer fund and not one of our trustees is in any sort of business in a real, as opposed to a technical, sense. We are not providers of financial services. We are providers and facilitators of an employer promise to an employee group. Briefly, that is who we are.

What we do not do is pay commissions to anybody. We do not advertise to anybody and we do not raise money from anybody outside our corporate group and their employees, subject of course, now, to the odd spouse account, which is being taken up by our employee members. We comply with the Superannuation Industry (Supervision) Act in that we have basic equal representation rules. We have member elected trustees and employer appointed trustees. We are supervised rigorously by APRA at great expense for very little return. We are supervised by ASIC and the ATO. We are, I think, by reputation, compliers with the law and we are proud of our position in this industry.

We came today to make a submission concerning the Financial Services Reform Bill, a bill which will impose great cost and expense on our members and on our trustees and, if enacted in its present form, will drive us from the market. Our submission is that it is not appropriate that we be regulated by this legislation and that we should continue to be regulated by the Superannuation Industry (Supervision) Act. In short, that is our submission, Chair. I would be happy to elaborate on anything in our submission or answer any other questions you would care to ask.

CHAIR—Thank you. Senator Allison, would you like to start?

Senator ALLISON—First of all, we are actually not inquiring into that bill but we probably will be soon. Can I ask you about the two roles of APRA and ASIC? The committee has heard evidence in the past that there is some confusion about their roles. But what is your experience with those two organisations? Do you think there are some grey areas? Do you think there is some restructuring necessary to make it work better?

Mr Cerche—I think there is certainly confusion in the roles at the ground floor in both organisations. There is certainly confusion at the receiving end of their tender mercies. Both

seem to ask for the same sorts of information. Both seem to inquire about the same sorts of things and you get different responses, which is not productive, in my experience. There is, no doubt, a territorial war going on between the organisations. No matter how they deny it, that is simply the case, in my experience.

Senator ALLISON—Can I invite you to expand a bit on that from your own perspective? What sorts of issues do you get conflicting advice about?

Mr Cerche—The basic distinction is supposed to be prudential supervision in APRA's court and consumer protection in ASIC's court. Those two come together when there is a problem. Typically, we do not have a problem in either of those areas. It is in other areas where APRA and ASIC have discussions. A case recently came to pass in respect of an interpretation of the SIS regulations concerning pooled superannuation trusts, as to whether a pooled superannuation trust existed by definition or whether it existed because a particular trust wanted to enjoy the tax concessions available to pooled superannuation trusts. The traditional position has always been that a pooled superannuation trust, in order to be a pooled superannuation trust, had to meet certain qualifications and had to apply for the taxation concessions available.

Recently APRA has taken the view that the regulations define certain trusts as pooled superannuation trusts, whether those trusts intend to be or want to be a pooled superannuation trust at all. ASIC takes a different view, but they need to work together on that. I have had an experience whereby ASIC has taken one view, APRA has taken another view in relation to that, and I have needed to accommodate both views to reach a less than satisfactory conclusion for the superannuation funds involved. They thought they were not dealing with a pooled superannuation trust and suddenly APRA thought they were, ASIC thought they were not. But, in any event, we had to comply with both because if either were wrong there was a significant criminal penalty involved, so care had to be taken.

CHAIR—Did you get resolution from them?

Mr Cerche—Yes, we did. The resolution was unsatisfactory because it defeated what was a perfectly legitimate and appropriate type of activity for a large superannuation fund to be involved in, and that is investment in offshore limited partnerships. But, be that as it may, the situation has been resolved pro tem, so far as the regulators are concerned, and the arrangements are being unwound. The result will be an increase in tax for the funds concerned and a loss of foreign tax credits to the funds concerned, which will make a number of the investments previously thought to be attractive very unattractive, so they will have to be unwound.

Senator ALLISON—It has been said earlier today that there is far too much nitpicking for funds that are largely compliant and not enough effort in tracking down those that have not paid their SG. What is your perspective on that?

Mr Cerche—Certainly we put our material out to members in accordance with the legislation and we are substantially compliers in that respect. We do have difficulties, though. Terms such as 'preserved benefits' or 'unrestricted non-preserved benefits' do not translate well into Turkish and you need to use more sensible language when you are communicating with people who are not literate.

Senator ALLISON—Are you referring to employers or employees?

Mr Cerche—Employees. One of the problems that ASIC has pointed out is that communication material, whilst substantially complying, does not use the language of the regulations. To my mind, one should always comply with the law, but one should also use language that the people receiving the communication can understand. To try and explain to anybody what an unrestricted non-preserved benefit is is very difficult. To try and explain that to a person whose second language is English is impossible. You need to use language that they understand. Cashable or non-cashable is relatively easily understood, but ASIC takes the view that that is non-complying.

Senator ALLISON—It is not complying?

Mr Cerche—Not complying with the legislation because the legislation talks about preserved and non-preserved. We have had that argument with ASIC, and ASIC are reconsidering their position. That was an argument that, with a bit of sense, need not have happened or got public exposure. And to be labelled non-complying because you do that sort of thing is offensive, frankly.

Senator ALLISON—The Industry Funds Forum indicated that they spend a quarter of a million dollars every year on chasing up late payers. Does your organisation do that too, or are your employers largely good at paying monthly?

Mr Cerche—We are compliers in respect of remission of contributions in accordance with the legislation. We have had no substantial issue in that. Bear in mind that our funds are separate funds which are established for each corporation. For example, BHP has a superannuation fund and all of BHP's subsidiaries remit monthly in accordance—

Senator ALLISON—So you do not have quite the same problem?

Mr Cerche—Not at all. We do have a problem sometimes in identifying casuals and itinerants. We do have those sorts of people. One of the difficulties that an employer has is that in Melbourne, where the administration system is, we do not really understand that somebody has been employed at Groote Eylandt to clean out some sheds until six months after, if at all. So there are difficulties with gathering information on a real time basis when you have far-flung empires and when you have diverse types of operations.

It is quite common in Weipa, for example, to take the kids at the end of the school year and give them some odd jobs and pay them some money, otherwise they do not have any money. So you do that and then somebody says, 'What about the superannuation guarantee?' You say, 'Did they meet the limit?' The answer is usually no, but if the answer is yes then we have got a tax liability and we will not do that next year. Simple.

These laws are all very good, but when you apply them to the micro they create quite a deal of difficulty on the administration side. But I can sit here and say that very few of our funds have SGC shortfalls, and if they do it is usually an error. It is a miscalculation of what the base is or it is a failure to recognise a person as being an employee. For example, you might have

seven John Smiths and an eighth appears, but with no tax file numbers you might not recognise that you have an extra John Smith on your books. When those things are identified they are remedied, usually by a payment to the tax office because that is cheaper. And bear in mind that the SGC is optional, it is not compulsory. You can pay it to a superannuation fund or you can pay the tax. In many cases it is often cheaper to pay the tax because the system to pick up the small fry is so expensive.

Senator ALLISON—Can I get on to investment. Corporate funds, it is fair to say, have a very good record of returns. Do you have a special education program for trustees? How do you account for the differences between yours and other funds?

Mr Cerche—We have an interest in the returns because we are a mutual arrangement. The employee members share the benefits of a good return and, typically, the employer benefits either directly or indirectly from a superior investment return. They know that. That is not education, that is simply knowing that costs impact on investment returns. The thing that corporate superannuation brings to the argument is the ability to challenge costs and, when dealing with a service provider, a funds management arm or a financial supplier of services, we can say that cost is not acceptable because we know it is not acceptable and we can shop around. We find it very difficult to shave costs because—I do not want to go into ACCC issues here—it is certainly very difficult to find a percentage point between the investment managers providing the same services. But, certainly, that is where we excel in that we contain our costs and we do not have other costs. We do not advertise, we don't—

Senator ALLISON—So it is not clever strategies for investment that gives you the advantage?

Mr Cerche—We select superior fund managers. We move fund managers if they do not perform. We review them. We do actually have no interest in the fund manager other than as a deliverer of net return to us. We are not locked in to any particular fund manager because we do not own them, whereas a lot of the other funds hang off or exist only to provide money to the fund manager, not to provide benefits to the members.

Mr Brookes—Perhaps there are two other areas too. One is that the defined benefits element of our members is very strong. As you know, the difference of defined benefit is that effectively the sponsor, the employer, takes the investment risk. There is zero risk from the employee's point of view or the member's point of view. That also allows the strategy of the defined benefit to take a much more long-term approach to investment. *Ipsa facto* most of the investment will give higher weighting towards equities than towards the cash end of the market. Accumulation funds will typically have more cash weighted or bond weighted lower yielding areas than the defined benefit side of the equation.

The other point, if I may raise it quickly, is that our corporate investment returns have been very good. The difference between first and second quartile is maybe one to 1½ per cent per annum over a long period of time. If you look at the cost of running it, as Mark has outlined already, one of the major costs is administration within those fund returns. The corporate sponsors are actually, almost without exception, providing the administration at no cost to the member, the employee. Often insurance is also added on at no cost as well. These differences

are critical differences with the mutual not-for-profit argument, which is our big philosophy and what we want to maintain but that is in danger of being squashed on the head by a number of proposals coming through to the Senate at the moment.

CHAIR—Such as notional calculation of a GST on the service provided?

Mr Cerche—That is certainly an issue. To have a GST on something that is provided as an employee benefit seems a bit peculiar to me, but that is not what the law says.

Senator SHERRY—I notice in the context of disclosure, in paragraph 7, you made some observations about the complications of choice of fund. Given the structure of corporate funds and their very nature, how would the theory of membership choice of a fund work with a corporate fund? How would the concept that the member has in law the right to say, ‘I am going to belong to the corporate fund,’ or ‘I am going to belong to something else’ work in practice for corporate funds? What would be the impact?

Mr Cerche—It is very interesting. If you happen to have a trust deed that was originally backed on to a National Mutual policy you would end up in a situation where the corporate may be required to continue to pay to the corporate fund in respect of the employee and the employee may be in a position to request that the SGC component of the superannuation be paid somewhere else. There is a double jeopardy for some corporates. But the more likely outcome will be that the choice will apply only to the SGC component. I suspect that a lot of corporates—not necessarily the funds that I represent, but certainly the smaller corporates—will take that opportunity to reduce the level of commitment to superannuation by going back to the SG minimum on the basis that if the employee does not like what we are doing for them and wants to go somewhere else they can. The outworking of that is that they can only deal with the SGC component. The balance of any superannuation support would be lost to that employee. I suspect, that this will apply in the case of the smaller funds.

Senator SHERRY—In terms of the operation of corporate funds, whatever the final model—if there is a final model adopted and change occurs—will membership choices as such add to costs or make it simpler for corporate funds to operate?

Mr Cerche—There will be an additional cost, of course, because people will be asking for more information before making a choice. I expect that will have to be supplied and would be supplied. The risk would be an abandonment of the corporate arrangement.

Senator SHERRY—I see that. But I put it to you that, if a person is given the legal right to make a choice, the counter-argument by those who philosophically support this approach—I do not—would be that that is their decision. If they decide to go elsewhere—and they did in the UK, apparently—isn’t that tough luck? That is their individual decision.

Mr Cerche—I certainly agree with that. I am just pointing out that the outworkings of that are likely to be unexpected in the sense that their superannuation support will be reduced, the characteristics of the fund that they join will be different and no amount of explanation, or cost in explaining, will help them unmake that decision if they are in the hands of somebody who is

prepared to pay them some money to make the choice. That is what I am terribly concerned about in this choice environment.

Senator SHERRY—I have one final point: in 7.2, whatever the final model that is adopted you do recommend that the existing corporate fund, or the agreed industry fund, is the default fund. What is your rationale for that?

Mr Cerche—The employer will need to deal with 40 per cent of the employees who do nothing, and there needs to be some certainty there. Our preference would be to the corporate fund because we see that as a superior model, but we also understand that there is another group of not-for-profit funds out there which may believe that they are a superior model. The real point is that there will be people who will make no choice no matter what, and the corporate has to do something with it and does not want any pain in that process.

Senator SHERRY—Where did your figure of 40 per cent come in that you just mentioned?

Mr Cerche—Experience is that, when you send material out from the fund, 10 per cent is not opened—it is put in the bin—others do not care, a group does not understand and then there are the prevaricators who cannot make a decision to save themselves. Inaction is going to be a great contributor here. Our experience of asking people to do things for their own benefit, such as updating their nominations of dependants, confirming that they are happy with them even if they do not want to change and sending us back a form saying that they have addressed the issue so that we can be confident that we have got up-to-date nominations or benefits, is that 30 per cent will return.

Senator SHERRY—Presumably, in corporate funds the level of communication that you would have with members of corporate funds, the level of stability of the work force, would be more effective than, say, in a lot of other areas where turnover is a lot greater?

Mr Cerche—Indeed. We are in a direct employment relationship; we actually know our members. But, more importantly, the members know the people who represent them. So the level of communication, I think, in our type of fund is probably better, more personal, more frequent than in others.

Senator SHERRY—I am just surprised, given that you have used the figure of 40 per cent. It seems high, given the circumstances of corporate funds.

Mr Cerche—A lot of them will not respond because they will be very happy where they are and they will not want to change. We have done reasonably full and extensive surveys of our members as to whether they want choice—whether they want choice of funds or whether they want investment choice. Rather than have them come back, we have actually gone out there and got discussion groups together and called people from the workplace, had meetings, filled in questionnaires, and overwhelmingly the members do not want choice. They do not even want investment choice. They are quite prepared to let the trustees that they elect continue as they are. The vast majority of them simply do not want it and are quite prepared to let the system roll on. Our statistics are overwhelmingly in favour of that.

Senator SHERRY—If you could take this on notice, you might be able to supply us with some data of those sorts of surveys. I would be interested in that because it is interesting that, when you take away the rhetoric and explain things in their full context, we seem to get very different answers about what the demands from members of superannuation funds are. The research that you have done would be good for us to have a look at.

Mr Cerche—We can certainly supply some statistics. They have come from funds which are perhaps not typical, but they are very large funds and the employer contributions rate may be 16 per cent and not eight. The statistics tell us that the employees do not want choice of fund; they are very happy with our fund and they do not even want investment choice, so we can supply that.

Senator SHERRY—Thank you.

CHAIR—Is the association concerned that much of the recent legislation has tended to have an adverse impact on corporate super?

Mr Cerche—Yes. Regulation is good for us, we know, but regulation also represents a cost. When the regulators are not stable in the sense that you are not dealing with the same person from one review to the next, at the larger end where we believe we are properly run and where we have internal and external auditors, where we employ professional custodians and have them audited and where we have monthly exception reports and all of that, we find—dare I say it—that when APRA comes calling we do not see the same person again and we go through an education program and get the same sorts of issues raised over and over again. That is one side of it. There is little doubt that we are sensitive to regulation which does not seem to us to add much value. We do understand and accept that we must be run properly and we must be responsible for our members' money and that we have to be looked at by other people. We accept that.

CHAIR—Are you concerned that there is inadequate training by members of APRA before they send people out on the job?

Mr Cerche—In another place I am quite used to educating young auditors as well. People do have to get educated on the ground and have to go out into the field. They must get experience. We understand that, but we seem to be the bunnies.

CHAIR—Can we make it a statement in our report?

Mr Cerche—It is a concern to our members because they get frustrated by it. One thing that absolutely upsets our members no end is getting an APRA report which is presented in such a way that it is damning of us but when you get to the substance of it the minutes have failed to record something or other is what they are saying. Of course, there is no legislative requirement that the minutes do that. If the minutes pass unanimously there is no need to say that. APRA would write a stinging letter about this most heinous default in most uncomplimentary terms to the trustee. Nothing upsets a conscientious board more than having to deal with that sort of nonsense. We are not happy with APRA really is the general view that we want to convey, but we do accept that they need to be there and we need to be regulated.

We also need to point out that the cost to funds of APRA is very significant indeed. One of our member funds this morning received a letter from APRA saying that they are very pleased to hear that APRA is getting more efficient and that the fees of supervision will go down but, unfortunately, their fee will go from \$42,000 to \$46,000. They were less than enthusiastic about that, as you can imagine.

CHAIR—Any comments?

Mr Brookes—Just one quick one, that beneath all this is really the concern for the individual, the individual members of the schemes. That is our overriding concern. That has been well dealt with through the trustee mechanism that we have in the funds. Whatever else we are targeting, at the end of the day if the individual is worse off under legislation through cost or otherwise then that is adverse, and our position is to protect the best interests of those individual members of all our schemes.

CHAIR—Thank you.

[11.00 a.m.]

COOGAN, Mr David Nicholas, Chairperson, Superannuation Taskforce, Institute of Chartered Accountants

RASSI, Mr Richard, Partner, Deloitte Touche Tohmatsu

CHAIR—Welcome. An earlier witness indicated that a number of liquidators seemed to be ignorant of the fact that superannuation is a preferred creditor in terms of superannuation guarantee and that from time to time liquidators do not seem to appreciate that. Would you mind passing that on to your professional body? I am sure it is the exception rather than the rule in terms of the Institute of Chartered Accountants but it is something that should really be passed back.

Mr Rassi—I will take it on notice.

CHAIR—Would you mind speaking to your submission?

Mr Coogan—What we wanted to talk about today was our submission in terms of two areas, one looking at the prudential supervision and consumer protection for superannuation, banking and financial services, and the other at compliance or enforcement of the super guarantee charge. On the first issue to do with prudential supervision, our submission covers two areas. What I plan to do is expand a little bit on those. The first area is in terms of consumer protection and some of the proposed regulation framework changes in terms of CLERP 6. As an institute representing our different members we are comfortable with and support in principle the CLERP 6 thrust in terms of what CLERP 6 is trying to achieve.

We, as an institute, with Treasury and ASIC, have been working quite closely through some of the practical implications of some of the proposals that are outlined there. We are quite encouraged by the fact that areas such as incidental advice are still being allowed to be handled through the proposed legislation. We are also encouraged by the whole issue that from a licensing point of view you require a licence where you are dealing in specific securities, and that seems to be the underlying thrust of the legislation. We are in the process of continuing to work through with ASIC and Treasury on some of the practical implications. We are encouraged by the fact that there is provision for declared professional bodies to complement the single licensing provisions that are in the legislation.

In terms of prudential supervision of superannuation funds, the first area that I would like to cover is in terms of the overall prudential framework for superannuation funds. We as a profession work in a number of different roles for a range of types of funds, whether they are corporate funds which you discussed earlier, industry funds, master trusts or public sector funds and so forth. We are involved across a quite broad cross-section of the industry, ranging from the smaller DIY funds or self-managed funds all the way up to the larger funds. We feel that the existing prudential regulation of the industry is quite robust in terms of the SIS Act and regulations. We are comfortable with that in principle.

We do have a couple of recommendations that we will come to shortly. In terms of commenting on APRA and their role, that has been discussed earlier. We as auditors in our role through the Institute of Chartered Accountants deal quite regularly with APRA. We are well aware of their CRIMP model which covers the whole area of controls, risk management, investments, the management of the fund and the prudential management of the fund. We are quite encouraged by that. We think that APRA have the right approach there in terms of working with trustees to make sure that they are properly managing the funds.

In our experience, we have found that trustees are very diligent, and I know that has been reported earlier this morning. On the positive side, APRA, I think, have helped to tighten up some of the prudential management of funds in making sure that funds have formal policies and procedure manuals, address strategic planning issues, do proper due diligence work on investment proposals, look at fraud prevention programs and compliance monitoring and look at the service standards that are with their different service providers. So, on the positive side, I think they have made trustees think a lot harder about documenting their tracks, rather than just talking within the trustee meetings and informally about things happening without any real due process.

One key issue that we are finding at the moment is that I think it is fair to say that APRA have recognised that the superannuation industry is well managed. Over the last five or so years they and a lot of our clients through our membership have done three or four audits on a lot of the funds, or reviews on a lot of the funds. The reality is that I think they have not come up with much other than what I talked about earlier. At the moment there is a real resource issue in APRA. On the positive side, a lot of the people who were in APRA have moved out into industry. So, with a lot of the knowledge, skills and experience that they have built up, they are now out in industry and working on compliance monitoring and things like that. That is on the positive side; on the negative side, there are not a lot of resources left in APRA from a review point of view of the industry.

On some areas of emphasis and, I guess, improvement: as outlined in our proposal, we suggested that APRA should look at what we call 'globalising' some of their work. If they are testing a particular fund, there is no reason why they cannot do some review procedures on a particular administrator or on a particular approved trustee, rather than doing an extensive amount of work on a particular fund and duplicating that through the whole review process. We know that is something that APRA have done in the past, and it has been quite successful. They have done technology reviews and all sorts of things on particular administrators. We would encourage them to reconsider that approach.

On some of the more practical issues from a prudential supervision point of view, we see some of the things coming through in terms of member investment choice and investment choice. I think that, from a prudential management point of view, a prudential supervision point of view, there needs to be more emphasis on the disclosure regime. One of the issues that you talked about earlier, in terms of making sure that members are properly informed before they make particular decisions or choose between different funds, is the whole issue of management expense ratios. We see that as something that the industry, whether it is the regulator through accounting standards or whatever, needs to focus on. The way things stand at the moment, if people are going to have member investment choice they are going to find it virtually

impossible to choose between funds in comparing costs and investment returns because there are no real standards of disclosure that are consistent across different funds. So we raise that as a serious issue.

On the issue of member reporting, the reality is that at the moment members get a lot of reporting; they get an annual report at the end of the year. But one of the things that we feel should be included in that reporting, which is actually included in the accounts of all funds under AS25, is that there needs to be disclosure on related party transactions and related parties to particular funds. We feel that that is something that is important information for prospective members to know about. That is it on the prudential management side.

The other issue is the role of the auditor, whether it is an external audit or an internal audit. As external auditors, we see our role as important in complying with the relevant legislation in terms of reporting on non-compliance of funds not meeting the report deadlines and so on. We have worked quite constructively with the regulator through the institute and other forums within industry to make sure that the standards have improved over the years. There are national APRA liaison meetings that occur between the accounting profession and APRA.

On the second issue of the super guarantee charge, the only real point that we wanted to make there was that we definitely encourage more regular contributions from an SGC point of view. Our suggestion would be quarterly. The main reason why we are not suggesting monthly is that, from a paperwork point of view and from a small employer point of view, we feel that it is an additional burden. We feel that quarterly would do the job.

Mr Rassi—I would like to table a report that I prepared entitled, ‘Top 10 audit issues from 1999—a post mortem summary report of audit findings’. The background to that report is that I am the approved auditor of approximately 600 funds in my role as national partner at Deloitte Touche Tohmatsu. I felt that it was important to summarise the results of our findings, having completed the audits of all those entities. There are a number of issues there. Some are more serious than others; some might even be considered to be minor. But the fact of the matter is that there are a lot of inefficiencies and a lot of examples of non-compliances that still exist out there in the industry.

CHAIR—Mr Rassi, rather than have it tabled, it is my wish and the deputy chair’s wish that it should actually be incorporated because I think it is a very useful document that has obviously already attracted a lot of attention. Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

Mr Rassi—These audit issues reflect a number of things, but one of the key points is the fact that trustees have imposed on them a lot of regulation and I think a lot of trustees of corporate funds are lacking the resources to properly carry out their role. On the other hand, there is also some inefficiency within some of the administration firms which those trustees have outsourced their administration to which is leading to some of these problems. I suppose the more serious ones that concern me as approved auditor are items like No. 8 where there is occasionally lack of reconciliation of assets with the membership records which, of course, increases the risk of error and fraud. We know that fraud is very much alive and well in superannuation. It is a number that is growing. A lot of people would say that it is a very small number in terms of the total amount of assets there are invested in superannuation but, nevertheless, the problem is there.

CHAIR—In what area is it that fraud is increasing? Can you identify the most vulnerable areas?

Mr Rassi—A lot of the fraud is not reported, unfortunately. It is resolved and not reported. So it is very difficult to actually get statistics on it. Certainly in my role as auditor of a number of funds, I have come across fraud and it does exist. Quite often it is very difficult to pick up. A lot of the times it comes down to poor internal controls, inadequate segregation of duties and lack of monitoring by the trustee board of the operations of the fund.

Senator HOGG—On that point, are you able to quantify in dollar terms the amount of fraud?

Mr Rassi—APRA had one figure some time ago which was up around the \$20 million mark. I suspect that that would be probably closer to \$25 million or \$30 million. That figure is unable to be verified but APRA definitely have some numbers on it. As I said, a lot of the fraud is just not reported and recorded.

CHAIR—Simply because the employer makes it up, or what?

Mr Rassi—Sorry?

CHAIR—Because an employer or somebody makes up the difference?

Mr Rassi—That is exactly right.

Senator HOGG—And it is also because of the embarrassment of being found out. That is the big thing in many of those funds.

Mr Rassi—That is exactly right. When it does occur, the employers are very keen to keep the publicity down to a minimum and to rectify the problem. Together with the insurance company, it is all settled privately.

Senator HOGG—Is it your experience where fraud is found and, for want of a better word, is covered up in that sense that there is not a repeat of the lack of prudential or internal supervision of the fund that allowed the fraud to take place in the first instance?

Mr Rassi—I think once fraud occurs it definitely does ring an alarm bell to the trustees and the employer. I have seen evidence where significant changes have been made to modify. In one case one of the funds was performing the administration in-house and it was in-house employees that defrauded the fund of \$1 million. That fund outsourced its administration to an external firm to overcome the problems of segregation of duty.

Senator HOGG—How much of this is the fact that trustees do not take their role and their duty seriously?

Mr Rassi—I think, largely, trustees do take their role seriously. But I think in a lot of cases they are not adequately trained to specifically drill down in some of these areas. A lot of them do not have an accounting type background. They may not be business trained. They could be workers off the shop floor that do not have that sort of background and that appreciation of control and prudential supervision and corporate governance. So I think a lot of it does come down to lack of awareness. But there is a small percentage of trustees out there that are really token trustees and in my view should not be trustees. They would be better off giving up their roles and putting their corporate fund into a master trust arrangement for the benefit of the employees. But that is only a fairly small percentage.

CHAIR—Is there any evidence that such people are being led by dominant chairs or dominant people?

Mr Rassi—There are some instances of that. But, all in all, I think overall a lot of employers actually allow the employees to have the lion's share of the say at these trustee meetings. I am a trustee myself. I am the chair of the Deloitts national staff super plan and also the partners' super fund. In the staff one we have 3,500 people. There are four of us on the board. I am one of the employer representatives. Certainly when we conduct meetings the employees are given more than a fair share of the say in decision making because at the end of the day I take the view that it is their moneys and they should have the lion's share of the say in the decision making process. I am really there just to facilitate the decision making.

CHAIR—That might not be a good example because the people there were pretty well educated and informed about what is happening. Generally, people are not well informed about superannuation. I am worried about your comment about token trustees—people who just sit there and follow the lead, as it were.

Mr Rassi—Unfortunately, that does happen. Companies want to retain their corporate funds but find it very difficult—

CHAIR—Should we have more professional trustees?

Mr Rassi—Yes, I think so. I think there should also be scope for having outside, independent directors sit on some of the trustee boards as we have in the corporate environment. It is an extremely healthy formula and it is one that will definitely significantly help the operation of the industry. It will bring an outside perspective. You will get professional trustees, as you say, sitting in on boards and providing their expertise and leadership. A number of industry funds have, of course, appointed independent chairpersons. I think that works very well. I think that

model ought to flow through to the corporate funds. At least the major corporate funds should be adopting that corporate governance model. I think my colleague would probably agree with my comments.

CHAIR—How good is corporate governance amongst trustees?

Mr Rassi—I think that sometimes the boards are far too big. My recommendation to my clients is usually to keep it down to four if you can. A lot of boards have 10. I have seen up to 17 or 18 people sitting around a table trying to make decisions regarding the fund, and it just does not work—it is too unwieldy. Seventeen or 18 people around a table are not going to make good decisions. People are not going to be able have their say and meetings just drag on and they are not very efficient. My recommendation is always to try to keep the number of members on the board as trim as possible.

Senator SHERRY—While we are on this issue, I agree with most of you comments, but I was just a touch concerned when you were talking about having an accounting background or a business background. Isn't it important that a trustee is an effective advocate who obviously has some knowledge or develops some knowledge of superannuation, but they do not all have to come from a business background.

Mr Rassi—No, they do not.

Senator SHERRY—I will just illustrate it anecdotally. In the Maxwell fraud case in the UK, the only trustee who actually did question some of Maxwell's investment decisions was a Scottish print worker who, for his pains, was removed by Maxwell from the board of trustees. He did not have any background in business, but he had a fair background in commonsense, which I think is probably a pretty important ingredient.

Mr Rassi—I agree with those comments. It is not mandatory that everyone be business trained and accounting trained but certainly, if they do not have that background, they ought to become at least financially literate and be in a position to understand the issues on the table and be prepared to undertake training in legislative matters and trusteeship.

Senator HOGG—It may well also mean that they have access to independent expert advice. That may well be the issue that resolves the problem. In much the same way that many of us who sit on various committees are not expert in everything, we have access to expert advice which apprises us of the situation. How much access do these people who are not professional accountants and business investment advisers and so on have to independent advice on the board of trustees that they sit? Is this an area that needs to be addressed?

Mr Rassi—I think it is always going to be a problem for those people to seek advice. Superannuation funds typically in a corporate environment have fairly limited resources. I have not seen examples of where individual trustees are given the opportunity to seek and pay for independent advice. So I would say that the opportunities are fairly limited and maybe it is an area that needs to be addressed.

Mr Coogan—I could add a little bit more to that. I think you have got to look at the different size of funds. You have got large funds and you have got smaller corporate funds, and within corporate funds you have got large corporate funds as well. So it is a matter of degree. A lot of the smaller corporate funds very much rely on their administrator to provide a lot of the support—whether it is legal support, regulatory support, help in the investment process or all sorts of things. That is where they draw on the expertise from the administrator across their business.

On the larger funds, I had one strategic planning day with a medium sized industry plan last week—I was away for two days—and the first day was purely on corporate governance. We had been doing a lot of work over the years in terms of how they manage business risk, what the different risks are in the fund in terms of competition, in terms of product, in terms of service—all sorts of different things—all the way down to the detail on how they monitor their service providers. There was equal representation at that meeting, and that was the third strategic planning session we have had over three years where they drilled down into the detail. Whether it is the employer side or whether it is the member rep side, they are very diligent through that process. So I think a lot of the things we have talked about are happening. The issue is, is it happening 95 per cent of the time or is it happening 40 to 50 per cent of the time? I think you have to look at the larger funds versus the smaller funds.

On the issue of whether trustees have independent access to legal advice, under SIS they obviously do but from a practical level probably not. I know, for example, that the Australian Institute of Superannuation Trustees has a service available, a panel of two or three lawyers. Members of the institute—about 900 trustees—have access to that service and it has been used.

Senator HOGG—Can you give us some sort of analysis of the use of that? Can you get it for us?

Mr Coogan—Yes.

Senator HOGG—I think that would be interesting because that is an area of concern to me. Thank you.

Senator ALLISON—Can I ask you about your comment that you think APRA has lost a good deal of its expertise and is under-resourced in that respect. Does that reflect on the education system that we have? Does it mean there is a shortage overall of expertise in this area? What do you see as being necessary to overcome that problem?

Mr Coogan—The answer to that is yes. How do we overcome that problem? That is a difficult question. It applies not only to APRA but also to the accounting profession. Most of the accounting firms have trouble getting people to work on audits of super funds because they seem too complex and not interesting and all sorts of different things. Then you have the professional administrators as well, where people are burning out, so to speak, because they just cannot keep up with the workload. What is causing that? There are a number of things causing that, but I think one of the key things is that we have to stop the amount of change from a regulation point of view and focus on the bigger issues rather than on some of these detailed things that are not necessarily that important.

CHAIR—Can you give us some examples?

Mr Coogan—Some of the things like those we talked about earlier—the whole issue of management expense ratios and of communication of material to members. We have all these different regulations but the reality is that people do not read all that stuff. All they want to know is what the investment return was, how much they have in the fund and a few other bits and pieces. The whole industry is running around doing all sorts of things, but why are we actually doing it? What is it actually achieving? We need to stop a lot of the change occurring. I know that down the track we are looking at simplifying the system, but one of the areas of simplification is just to stop making changes to it and focus on the more important things that will help the members of funds.

Senator HOGG—You were saying that we need to simplify things and stop change for the moment. Is the superannuation industry going through a process much like any natural growth, where there needs to be a period through which it matures and people get used to what is there, and then make the decisions that are necessary to further change and progress the system?

Mr Coogan—Yes, I would agree with that. One of the issues that we have not talked about is the whole issue of technology in the industry. With a lot of the change that is occurring the systems have not been able to keep up with it. An example is the changes to the capital gains tax laws where super funds, providing they are holding investments for greater than 12 months, only pay 10 per cent rather than 15 per cent. That legislation came in last September, and the reality is that it has not flowed through to the records and the crediting rates of funds because the fund managers and the custodians have not been able to update their systems. That is a pretty big issue. The same applies to all the regulation changes that have occurred. The core administration systems are very dated in terms of the core software. The industry is taking steps to correct all of that and that will help with Senator Allison's issue about how we get people more focused and trained and retain them in the industry.

Mr Rassi—In a way, some of the mergers that have taken place recently have been a very good thing because they have allowed the firms to increase their size, take benefits of economy of scale, find the investment dollars to put back into the systems to improve the processes and to take into account all the legislative changes.

Senator SHERRY—I just come back to a point we were discussing earlier about trustee education and training.

CHAIR—Senator Allison was having a line of questions when she was interrupted.

Senator ALLISON—I raised education as a real issue. In my view it is because we are talking about not only sufficient skilled people in the industry but also consumers and how well they understand what is put before them. I suggest to you that part of the problem might go back to very early in our education process. In secondary schools we currently have a very high proportion—I do not have the exact figure; it is more than 30 per cent—of students being taught by teachers who are undertrained for the task at hand. This is specifically the case in mathematics and science. We have a shortage of postgraduate studies in education so we are not getting the teachers into the system. We are losing them because there are better paid jobs for

them outside. Have your organisations looked at this question of the looming shortage—not just what is going on now—the looming problem of teacher shortage and shortage of graduates choosing mathematics and mathematics related subjects?

Mr Rassi—I cannot say that we have looked at that issue.

Mr Coogan—As an institute, we have not specifically looked at that issue. I think you are right. In terms of superannuation specifically, we need to get the education back into the schools. I know the Australian Institute of Superannuation Trustees, for example, has worked on that already to try and get the awareness and knowledge up. On the training side, I think it is up to our profession and all the professional administrators, the fund managers and so on. They need to bring in new graduates and they need to come through the system to provide the resources.

Mr Rassi—They need to impose minimum education standards, in my view, particularly in the administration firms. I think training is a real problem and a real issue within administration firms. I do not think staff are being adequately trained.

Senator ALLISON—That is training on the job. Once they are there, there is not professional development?

Mr Rassi—It is training in legislation and superannuation concepts. A lot of them are picking it up as they muddle their way through. There is no formal process or structure to provide training to a lot of these people. It comes back down to the fact that the profits have been squeezed out of the industry and the operators are finding it very hard to invest in systems training for good people.

Senator ALLISON—So when trustees choose an administrator, one of the questions they should ask is: how often do you update or how often does that happen?

Mr Rassi—They should.

Senator ALLISON—Do they, in your view, ask those questions?

Mr Rassi—Some do and some do not. I guess it is becoming increasingly difficult for trustees of corporate funds in that there are not that many choices left with the mergers that have taken place in the marketplace. There is less than a handful of administrators that are serious players in this field.

CHAIR—What about supplies of other services such as life cover?

Mr Rassi—Life cover is a different matter. I think there are far more choices in that area and more competition.

Senator SHERRY—I just come back to this issue of education again. It struck me as we were talking and you were outlining the education training that, with regard to the sorts of knowledge that trustees should have, most have it but some do not. What struck me was that

many of those aspects that you were outlining will be the essential knowledge base that all eight million people in Australia will have to have in order to make an informed choice when considering the issue of membership choice. You are going to have to have every one of those people with at least some of the knowledge that you would expect of trustees at the present time to make a rational and informed choice. Do you agree with that?

Mr Rassi—Yes, although a lot of them will be seeking advice from financial planners.

Senator SHERRY—But ultimately the decision comes back to them in the same way that the trustee has to make the decisions on behalf of members at the moment.

Mr Rassi—Yes, although the decisions that the trustees have to make on behalf of the members is a lot broader than making decisions purely on investment.

Senator SHERRY—I understand that. You accept that there has to be for all of those eight million people a significant upgrade in their level of knowledge. Some people are financially literate and understand the concepts, but when you go out to the pub and start talking about this sort of essential knowledge you agree there is a very significant challenge?

Mr Rassi—There is indeed. I would agree.

Mr Coogan—From an institute point of view, our view has always been that we would prefer to see investment choice before fund choice because in that way people get used to making their own decisions before they actually have to jump and make a choice between funds. Making a choice between investment styles is not as hard in terms of being equipped to do it as choosing between one fund and another.

Senator SHERRY—I have seen some incredibly sophisticated ranges of options of investment choice in the States where people actually sit down at their Internet and pick and choose individual share purchases within the fund. In one sense the issue of membership choice then largely becomes irrelevant.

Mr Coogan—Yes, I agree with that.

Senator SHERRY—Because the return that they are getting really depends on the degree to which they want to be involved in investment choice.

Mr Coogan—What you are describing there is one extreme. We do have examples of that in the master trust market in Australia.

Senator SHERRY—Not well developed, but in the US it is much more widespread.

Mr Coogan—That is right. But it depends how far you go.

CHAIR—Do you think the legislative prescriptive requirements for auditors should be more detailed?

Mr Coogan—At the moment it is left to the profession to regulate the professional standard of auditors. That is certainly an area that is discussed a lot between APRA, the institute and the Australian Society of Accountants. I think it is fair to say that there have not been any major issues from a quality of audit point of view.

CHAIR—You have got one in Queensland at the moment.

Mr Coogan—I am aware of that. But in terms of the overall, it is a bit like fraud in the industry. If 99 per cent of your members are complying with what they should be doing and there is a process in place from a disciplinary and corporate law point of view where they lose their audit licence and effectively their income stream if they are not complying with the rules, then I think the processes are already in place.

CHAIR—You do not think it focuses the mind a lot more to have a more prescriptive regime?

Mr Rassi—My personal view on that is that it would not hurt to have some prescription to cover the larger end, and how you would define that would be up for discussion. There would be scope maybe to have some basic qualifications for people that can act as approved auditor, certainly of the public offer funds that are out there.

CHAIR—Have you got a paper on that from the institute?

Mr Rassi—I think you will find that largely that has happened naturally anyway. A lot of practitioners have moved out of this area. Certainly in our firm we have got a specialist group. My other partners would not sign audit reports or, if they do, they would get me to have a look at them before they sign them. I probably sign 95 to 98 per cent of the audit reports in our firm. I think it has happened to a large extent naturally.

CHAIR—But there are lots of other firms other than the big four or five that do it, and that is the area that perhaps we are most concerned about.

Mr Coogan—I understand the issue.

CHAIR—Thank you.

Senator SHERRY—I accept most of the concerns you are raising. Since the introduction of a superannuation guarantee in the early 1990s, Australia is almost unique in the world in terms of the structure and prudential regulation of compulsory superannuation for employees, although there are other systems that have compulsory private saving for retirement that I am aware of. Given the level of problems we have experienced, which has been relatively small—any problem is bad, you do not want it to happen, but it is relatively small on the scale of the millions of people involved and the billions of dollars involved—do you believe that there is any case for significant structural change to our system at the present time? I say ‘significant’—there are obviously smaller things that can be changed and I agree with some of the suggestions you have made, but do you think it is a time to be actually reshaping the system?

Mr Rassi—I think there is a lot of scope for simplifying the rules and regulations to help the eight million people that you describe understand the concept, how it works, bring it down to a level where the average man in the street can have a appreciation of the key rules, at least, and make it easier for trustees to manage their fund. I think simplification needs to be a key word on the agenda in the coming years. I think we have gone to the point where we have built up a terrific framework but have probably gone overboard in terms of prescription, regulation. Having said that, I think there are some areas where there needs to be some prescription brought in, and maybe the accounting example is one area. Another area could be the administration firms themselves which are, in my view, largely unregulated.

Senator SHERRY—My question was drawing a distinction between the structure, the framework, that we have got—whether it is corporate industry, APRA, the legislative framework, SIS. The compensation mechanisms in the event of theft and fraud. I appreciate the issue of simplification, but I think that there are some different issues there—tax simplification, for example. We have a lot of complications—we have grandfathering of benefits, for example. They seem to me to be other policy issues that are different from the structure that we have built up in this country.

Mr Rassi—I would not say that the model would have to be radically changed. The basic model is fairly sound, in my view.

Senator LIGHTFOOT—Gentlemen, I may have missed some of your answers to questions, but I would appreciate it if you could just reiterate them if you have already given the answers. How much in funds is under management at the moment? A generic figure will do.

Mr Coogan—In the superannuation industry?

Senator LIGHTFOOT—Yes.

Mr Coogan—Close to \$500 billion.

Senator LIGHTFOOT—What is the growth rate per annum? Can you give me some idea?

Mr Rassi—About 13 per cent.

Senator LIGHTFOOT—Is there a problem with obtaining auditors? You seem to say, Mr Rassi, that there may be a difficulty with auditors. Why? Let me answer that question. Is it because of the recent spate, particularly since the late eighties, of successful prosecutions of auditors who have been rather lax at times in pursuit of companies' balance sheets? Is that part of the reason?

Mr Rassi—No, I do not think so.

Mr Coogan—I think the issue is that auditors do work for a lot of different organisations—they do work for public companies, corporates, superannuation funds—and it is an issue of resources and, within different chartered firms, who has the skills to audit a superannuation fund. And that has changed.

Senator LIGHTFOOT—Haven't your insurance premiums appreciated considerably over the years?

Mr Coogan—Yes.

Mr Rassi—Enormously.

Senator LIGHTFOOT—What is the reason for that?

Mr Coogan—The reason for that is that there have been substantial claims to do with companies that have gone under, mainly in the 1980s, so there is still the working out of some of those collapses, or whatever, that occurred in the 1980s. That is not to say that there are not more current situations. One of the issues that we talked about earlier was the whole issue of fraud. As a profession, we are finding that there is an increase in fraud broadly. We talked about superannuation specifically earlier but, across the globe, the level of fraud in industry is increasing and that is having an impact on auditors in terms of what they need to test for.

Senator LIGHTFOOT—Is part of the problem the fact that anyone can be an accountant? They can get through the system and hang up a shingle which says 'A. Fraud and Associates' and people will go there not knowing that they have no tertiary level of education in their background at times.

Mr Coogan—There are educational requirements to become a member—whether it is a member of the Institute of Chartered Accountants or whatever, there are quite stringent educational requirements—

Senator LIGHTFOOT—But that is at your institute. Someone can hang up a shingle that says 'Accountant'.

Mr Coogan—They could not have a name. They could not say 'Certified Public Accountant'.

Senator LIGHTFOOT—That was not my question. Anyone can hang up a shingle that says—to use the expression—'A. Fraud and Associates, Accountants'?

Mr Coogan—No, they cannot.

Senator LIGHTFOOT—Can't they? Why?

Mr Coogan—They can't practise.

Mr Rassi—You need a practising certificate for starters and there are requirements and minimum standards.

Senator LIGHTFOOT—You can go to several organisations to get a practising certificate issued.

Mr Rassi—You can go to the Institute of Chartered Accountants. There is the Australian Society of Accountants and the national institute.

Senator LIGHTFOOT—You do not necessarily need a degree in anything?

Mr Rassi—You do to become a chartered accountant.

Senator LIGHTFOOT—That was not my question. What I am getting at is: does the accounting industry need more regulation, given that we have got \$500 billion under management? Part of the problem seems to me to be that there is not enough cultural background of accountancy practices derived from tertiary education. It seems to me that that is some of the problem.

Mr Coogan—We do not see that as a problem.

Senator LIGHTFOOT—I am not talking about your particular association. I am just talking about across the board.

Mr Coogan—I sit on the national APRA liaison meeting. That has representation from a lot of the different accounting bodies. We go through cases where there have been problems where auditors have not picked up issues with particular funds. I would have to say that generally it is the minority. It is not a major issue. We focus a lot on making the *Audit Guide No. 4*, which we did not bring along. Every year the Australian Accounting Research Foundation releases what is called *Audit Guide No. 4*. That is used quite commonly by all sorts of people who perform audits on superannuation funds. It provides guidance and knowledge on how to test compliance and what to look for.

Senator LIGHTFOOT—So it does not want tightening up? It does not want any further regulation? In these days of deregulation, that does not want further regulation? You are happy with the guidelines?

Mr Coogan—We are happy with the guidelines. What we have been trying to focus on as a profession is making sure that those people that are doing audits have got access to the training. Quite frankly, the training is all there across the different professional bodies—and a lot of it is sponsored by APRA as well, I might add—but the main problem is who actually goes to the training to make sure that they are properly equipped to do these audits. We have been working on that as an industry and as a profession quite diligently over the last five to 10 years. It is fair to say that the standard of audits has improved substantially as a result of that.

Senator LIGHTFOOT—Given the accrual accounting system that the government has undertaken—and this has gone through the industry somewhat—and the new tax system, that has exacerbated and stretched the services of large accounting firms considerably. They are working long hours, seven days a week. Is there a probability—

Senator HOGG—Is this an overtime claim?

Senator LIGHTFOOT—I do not think that there is any such thing with partners in accounting firms, Senator. Is there a possibility or a probability that somewhere along the line in the next few months there are going to be some major problems slipping between the bar stools?

Mr Coogan—To answer your question, there are two issues. One is that, under APRA, to be an approved auditor on a super fund you must comply with certain conditions under SIS. That is point number one. There are professional requirements to make sure that you have got the right skills and people to support you in performing those audits. The second point I would make is that I agree with you, there is an issue at the moment, but what has caused that issue is the tightening in the reporting deadlines for superannuation funds. In the past, the majority of superannuation funds have had six months to report to APRA and complete their financial accounts.

Senator LIGHTFOOT—If I could just pick you up on that, Mr Coogan, isn't there a relationship between the longer you are given to report and the more likelihood there is of there being a problem? If there is a long time in the problem being detected, there seems to me to be at least a chance of exacerbating the problem. The sooner you detect the problem, the less damage there could be.

Mr Coogan—I agree. The trustees have the responsibility there under SIS. Yes, from an audit point of view, it might take the difference between four months and six months—an extra two months—to detect the problem. You are right.

Senator LIGHTFOOT—It seems to me that, notwithstanding these days of low interest rates, there is still a low return on most superannuation funds. People expect, particularly on a compounding effect, a higher return. Is that an unreal expectation, given the restrictions in which super funds can be invested?

Mr Coogan—I am not sure that people would agree that the returns have not been as strong. Members are leaving the responsibility mainly to the trustees. Most funds invest 60 to 70 per cent in growth assets. There are not too many funds that invest lower than that. And then it gets down to how good the fund managers are that the trustees have selected. I know an earlier submission today was talking about a range of one to 1½ per cent in terms of returns.

Senator LIGHTFOOT—One to 1½ per cent per annum?

Mr Coogan—Between one particular fund versus another fund in the corporate sector there is a range of 1½ per cent in terms of returns. There is a lot of information publicised on that. The reality is that there is only so much investment return out there, and some fund managers will do better than others.

Senator LIGHTFOOT—What would you say was a reasonable return to a vested interest for their money in a super fund?

Mr Rassi—You cannot generalise because it really does come back to the risk profile of the individual, and every fund has different investment strategies—

Senator LIGHTFOOT—But your risk with superannuation funds is somewhat limited, isn't it? It is not open slather, is it?

Mr Rassi—A lot of corporate funds these days have got different investment strategies within the same fund that the member has to choose. So if you want to go for a higher growth strategy you tell the trustee, 'I want my assets invested in higher growth.' If I am reaching retirement age and I want to secure my capital I will tell the trustees, 'I want you to invest in capital guaranteed type products.' A lot of funds have got that choice within them. So it is difficult to generalise. The days are gone when funds have got one or two investments sitting on their balance sheet.

Senator LIGHTFOOT—But you are not going to get a sort of BT return of between 20 and 30 per cent per annum in a super fund, are you?

Mr Rassi—It depends on the investment strategy.

Senator LIGHTFOOT—You are saying yes, you can?

Mr Rassi—You can, depending on the portfolio of the investments that the trustees have put together and that the members have chosen. But we must also remember that superannuation should not be directly compared with other types of investments because it is very much a long-term proposition. You made the comment that the returns have not been great. I do not think you can generalise there. I have not seen any concrete evidence to back up that statement, but we have got to remember that trustees, I suppose, do err on the side of conservatism when it comes to investment, because superannuation is a long-term proposition. It would be very rare to find a fund being invested in pork belly futures or something as exotic as that.

Mr Coogan—I think one of the issues here is that example you gave of a BT of 20 or 30 per cent, or whatever. I think what you will find, though, is that a lot of super funds have actually achieved the same level of return, because what you are potentially referring to there was 20 to 30 per cent for an Australian equities unit trust type investment. The reality is that a super fund that has 40 per cent invested in Australian equities would have been achieving the same return.

Senator LIGHTFOOT—With, say, \$500 million worth of funds under investment, doesn't that mean that it is becoming more risky in order to get those funds out? If you do not invest them, you do not get any return. Banks are not paying all that much these days. Doesn't that mean that you are going to take some risk? Let me illustrate what I really base that prognosis on. Stock markets these days seem to be recovering from what appears to be a recessive dive, graphically expressed, and they recover quickly. They never did that in the eighties, they never did that in the seventies, and they certainly never did it in the 1960s, and I have been investing since then, but they recover quickly. That must be due in part to the massive amount of superannuation fund that is there. A lot of it goes directly or indirectly into the stock market and the market recovers quickly. Is that going to be the trend of the future: where you see the NASDAQ in the United States dive, when it would seem to be dead for all intents and purposes, if you express it graphically, and then, whacko, it almost reaches another peak? Is that a pattern that is going to be expressed in the future?

Mr Coogan—We cannot really predict what will happen to the markets but, from a trustee point of view, every fund has an investment strategy and the trustees are responsible for setting the allocation and assessing the risk profile of the investments that they are investing.

Senator LIGHTFOOT—But wouldn't you agree that those funds have to go somewhere?

Mr Coogan—They have to go somewhere. What we are finding is that a lot of trustees are looking to different types of investments, rather than the traditional Australian equities, international equities, to try to achieve better returns, whether it is through development capital or infrastructure projects, venture capital—some of those things. They are not risking huge amounts, but they are exploring other options because they are having trouble investing the money.

Mr Rassi—And investment managers do have the mandate from the trustees to invest in a variety of different investments.

Senator LIGHTFOOT—That is an imperative, isn't it?

Mr Rassi—Yes, but what I am saying is that it is not unusual, or uncommon, for those weightings to be changed in periods when there is a requirement to change those weightings. They are not going to be investing an increasing proportion of the asset base in a declining market. They will more likely direct those funds into cash or fixed interest securities until the market is seen to be—

Senator LIGHTFOOT—Even pork belly futures?

Mr Rassi—Perhaps.

Senator LIGHTFOOT—My last question is: with respect to mergers of your industry, has that been good or do you think there is some risk that, like banks, your clients are going to have to pay more for the services of less large accounting firms?

Mr Coogan—I think it is fair to say that competition is still very strong in the industry, whether it is among the big five accounting firms or whether it is among the other accounting firms as part of the total market.

Senator LIGHTFOOT—Is that going to become the big four?

Mr Coogan—Who knows?

Mr Rassi—Not unless Mr Coogan's firm merges.

Senator LIGHTFOOT—Mr Coogan, I thought that if anyone would know, you or Mr Rassi would.

Mr Rassi—I have not discussed this topic at the recent partners' meeting.

CHAIR—Thank you very much for appearing before the committee; you had some very valuable evidence. There are some questions that we have not got through, particularly in the global area. Would you take them on notice in deference to our next witnesses; we have run out of time.

[Midday]

WALKER, Mr Wayne, Executive Director, William M Mercer Pty Ltd

WARD, Mr John David, Manager, Research and Information, William M Mercer Pty Ltd

CHAIR—I welcome representatives from William M Mercer. Thank you very much for appearing before the committee. We always appreciate submissions from Mercers because of their consistent high quality.

Mr Walker—There is always the first time, isn't there?

CHAIR—Is it your first time appearing before the committee?

Mr Walker—No.

CHAIR—I know it is not Mr Ward's first time. I think you were at the roundtable, weren't you?

Mr Ward—I was, yes.

CHAIR—We have your submission. Would you like to address that for the committee?

Mr Walker—We have just a few comments, Mr Chairman. The general thrust of the program of superannuation change in Australia over the last few years from our perspective would involve, firstly, making sure that all Australians are covered; secondly, that the end benefit coming out at retirement is as close as possible to being adequate; thirdly, making sure that it is a relatively level playing field for Australians; and, fourthly, empowering individuals to take charge of their own destiny through choice and through the ability to make decisions.

The question that can legitimately be asked is whether the system that we currently have is going to achieve all of that. In a number of submissions in the past we have talked about levels of contribution necessary to produce adequate benefits and the like. I would just like to, in opening, raise a couple of points. The first—I did happen to hear it was raised by the last people—is complexity. It is fair to say that the superannuation regime that we have at the moment is horrendously complex. That has a number of consequences. Firstly, it drives up the cost of delivering service. Secondly, it has had an impact on the ability of those service providers in the industry to achieve true efficiencies out of the technology revolution. Thirdly, it has made it extremely difficult for—and I will use the phrase—those eight million Australians to, first of all, understand the system and, secondly, to make informed decisions and in many cases to even differentiate between what are the important decisions and what are the less important decisions.

Mercer as a firm has an extensive involvement in superannuation in this country in a number of capacities: as an adviser in almost all areas and as a service provider—administration being one. In terms of our role as an administrator, the effect of the complexity has made it ever more difficult to have adequately skilled staff capable of delivering the service. In fact, it is fair to say

there is a shortage of staff across the industry at the moment to be able to cope. This is particularly so in Sydney. It has led to the various firms competing for staff on the basis of salary and terms and conditions and to high levels of turnover, and I know it is not just our firm in the Sydney market. In part, that is exacerbated by the fact that almost 99.9 per cent of all superannuation plans balance on 1 July, and that has been a deliberate policy outcome of the changes that we have seen over recent years. As a lot of work is specific to the review date, that makes it extremely hard to spread the work over the full year. That problem is going to be further exacerbated this year because everything has to be completed in four rather than six months. That is the first comment that I would like to make.

The second comment relates to the tremendous responsibility that the retirement system in Australia is going to place on individuals to make the right decision to produce the right benefit. To me and to our firm, the key is to, firstly, have a system that is capable of being explained and, secondly, to educate consumers on the key decisions that they face. Disclosure is part of this; disclosure and education go hand in glove. It is much more difficult to have an effective disclosure regime where the system itself is inherently complex and, in some senses, unnecessarily complex. I have brought an exhibit and copies of it.

CHAIR—I ask the committee that this be accepted as an exhibit and tabled accordingly. There being no objection it is so ordered.

Senator HOGG—The document is headed ‘Underperformance cost members’.

Mr Walker—This is a relatively simple graphic that hides a hell of a lot of complex issues. I was struck at the Senate roundtable on choice of fund how the focus tended to be on the factors that might influence the default fund under a choice of fund regime. The discussion tended to focus on a hell of a lot of administrative things and the issue of getting administrators and fund managers to disclose administration costs, when in reality the key decision facing individual Australians is how their retirement savings are invested. Regarding the graphic, what is the impact on a benefit over a 20-year period? First of all, there is a 25 per cent saving in average administration cost. I cannot quote you offhand the average administration cost we base this on, but it is realistic. Ultimately, over a 20-year period that would increase the benefit by one per cent.

CHAIR—I might change that earlier resolution to incorporate the document in *Hansard* so that readers will have the benefit of the document in order to follow your comments. I think they are very pertinent. There being no objection, it is so ordered.

The document read as follows—

Mr Walker—The second little arrow looks at the other major deductible, insurance cost, from member account balances. A 25 per cent saving in insurance cost over a 20-year period will increase benefits by slightly more at 1.5 per cent.

Senator HOGG—What does that actually mean? Does a saving in the insurance cost mean not paying the insurance cost or getting lower insurance?

Mr Walker—A lower insurance premium.

Senator HOGG—Not necessarily removal of the insurance cost?

Mr Walker—No. The third arrow should be prefaced by a big bold ‘but’ in capital letters. But, if over a 20-year period you could achieve one per cent per annum higher return, benefits would increase by 10 per cent.

Senator LIGHTFOOT—Is it pro rata? Does it mean that if the return increases by 2 per cent there is a 20 per cent increase in benefits?

Mr Walker—There is a compounding effect there. I do not have my PC with me but the answer broadly is yes. It just shows you the order of magnitude. The reality is that employees—individual Australians—are going to have two choices in future. The first is which superannuation fund they will go into. The second is how their moneys will be invested. Competition will ensure that all of the superannuation funds offer broadly the same range of investment options and, as the previous speaker said, generally professionally, prudently managed assets pick the right managers and they are all pretty good really. The funds will have the same range of investment options. So choosing the fund is really all about choosing the first two little arrows. Once you are in a fund, you have got to work out how to invest, and that is the third arrow. We already have in many Australian superannuation funds member investment choice. For these people to make the right decision we need to make sure that they have all the facts, understand the implications of a growth investment strategy, a conservative or, heaven forbid, a capital guaranteed strategy, because ultimately that is going to produce not one per cent per annum less than a growth strategy but much, much more, and the end result will be—no matter how much money you put in—an inadequate retirement benefit.

The last point I would like to make is that a necessary by-product of the regime that is in place and the ultimate aim of current policy is the trend towards retail provision of superannuation. The large financial institutions offer products retail, and generally the fees they charge—and I do not have the precise figure here now—is equivalent to an additional one per cent per annum off the return relative to wholesale, and by that I mean individuals who invest, whether they be a member of a master trust, corporate arrangement or an industry fund. So there is a downside to retail, and that is in terms of end benefits coming out.

My final comment is that a system that is complex, where the level of investor knowledge is not what it needs to be but which is placing the onus on individuals to make decisions, is likely to lead to the sorts of mis-sellings that have occurred in the UK and in Chile. I think in both of those countries there is an element of people just making poor decisions. There is a lot of

money to be made in the retail market. There will be people out there selling and people making changes which perhaps are not in their best interests.

Mr Ward—I think it all comes back to complexity. Superannuation is probably the most complex financial product that most people in Australia will ever have any dealings with. While it remains so complex, most people out there are not going to take an interest in it or are going to concentrate on the wrong issues. Disclosure is very important with choice of fund; we need to get that right. I do not see it as merely adding another layer of banded regulations on top of what we already have that is going to solve the problem. I think we really need to go back into the guts of the issue and effectively look at disclosure requirements from the base up. Complexity, as has been mentioned earlier, is not only an issue for consumers but also an issue for trustees and for administrators. At the moment the non-tax legislation covering superannuation is in a binder that thick, and that is just the legislation and regulations.

Senator HOGG—How thick would you describe that for the sake of the record? I do not care whether you use centimetres or inches.

Mr Ward—Very thick.

Senator HOGG—Almost five to six inches?

Mr Ward—Let us say three inches.

Senator HOGG—All right. I just wanted an estimate.

Mr Ward—That is backed up by another similar sized volume of APRA circulars and trustee newsletters which attempt to explain the highly complex legislation and regulations. What I could not fit in my briefcase today was a third volume which covers the tax legislation which is basically superannuation related. The tax volume for superannuation only is probably thicker than that.

Senator LIGHTFOOT—These are A3 pages, old octavo pages, aren't they?

Mr Walker—Single spacing.

Mr Ward—Very small print.

Senator LIGHTFOOT—It is a lot of detail. I think that is what you are trying to say.

Mr Ward—It is a very significant amount of detail.

Senator HOGG—And you need a bigger briefcase.

Mr Ward—I need a bigger briefcase. The important point there is that a lot of that material is important for regulating superannuation funds for member protection and for tax reasons. There

is some important stuff in there, but over the last 10 or 15 years we have gone overboard. There are a lot of regulations in there which really achieve very little other than additional cost.

CHAIR—Could you outline some of those for us separately?

Mr Ward—One example is the requirement for superannuation funds to monitor how many hours a week members over 65 are working.

CHAIR—That is right.

Mr Ward—Based on APRA guidelines the trustee needs to check that monthly. For what purpose?

CHAIR—Could you give us a list of these on notice? I think it would be very interesting.

Mr Ward—I can give you a much more detailed list. One other matter I would like to raise this morning is that last year the legislation was amended to allow trustees to accept binding death benefit nominations. To date we have seen very few trustees taking up that option: the regulatory requirements that go with it are so onerous that it is not worth doing; it is too expensive to do. There are many potential areas where the trustee could slip up and then we would be sued by some person who thought they should have got some of the death benefit down the track. There needs to be simplification there. Tax simplification is also extremely important.

Is it appropriate also to make comments on the other terms of reference of the committee at this point?

CHAIR—Yes, by all means.

Mr Ward—In regard to the opportunities and constraints on Australia becoming a global financial centre, we really only wanted to comment on one fairly small issue; that is, the difficulties that superannuation requirements cause employers, particularly when they are transferring employees into and out of Australia, which I think is one of the consequences of Australia becoming a financial centre. There will be a much greater movement of employees into and out of Australia.

Firstly, we have the preservation requirements where an employer brings somebody in from, say, the UK and they work in Australia for two years and then go home to England, never to return to Australia again. The superannuation that they accrued in Australia is locked into this country for maybe another 30 or 40 years, by which time all contact with that particular employee would have been lost and I am not sure how we are ever going to find them.

Secondly, there is no current mechanism to avoid double superannuation costs. If you transfer somebody in from your subsidiary or other group company overseas, it is very difficult to stop contributing to their superannuation fund in their overseas country. When you know that they are going to go back to that country in a relatively short space of time that is where the employee wants his money to go. Yet the Australian employer, in most cases, is forced to pay to

an Australian fund as well to meet their superannuation guarantee requirements. There appears to be a duplication of costs there. Obviously, we do not want to set up a situation where you can employ somebody from overseas at a cheaper cost than employing an Australian, but surely if you are paying similar superannuation contributions to an overseas fund that should be acceptable.

Senator HOGG—Could you give us an indication of how widespread that is: the numbers of people and the quantum of dollars involved?

Mr Ward—I would find it very difficult to give you actual figures on that.

Mr Walker—What we can say though is that expatriates coming into Australia, when they do occur, are very important to the employers. As John says, it is all about becoming part of a global economy and, frankly, any stupid frustration that you put in the way of that does not make sense.

Senator HOGG—I accept what you are saying, but I thought if you had some actual statistics and data on it it might be helpful to us.

Mr Walker—We do not know.

Senator HOGG—Do you know of anyone who would have access to those sorts of statistics and data?

Mr Ward—I do not know.

Mr Walker—I am not sure, Senator.

Senator HOGG—Obviously there must be some basis which causes you to raise that as an issue in the first instance. I am not doubting your word but if you can quantify it—

Mr Ward—It is an issue that comes up from our clients on a very regular basis. We advise a significant number of large employers in the country. It is a significant number but not a large proportion of the total employers in the country. I guess one way of looking at it would be to look at the number of employees who come into this country on visas that are supported by an employer. I am not sure whether there is a possibility of getting some numbers from that sort of source.

Senator HOGG—So that might be something that we could pick up through Customs or Immigration, or whoever it is.

Mr Ward—The third issue on that particular topic I wanted to raise was that in a number of cases you have somebody transferred from overseas and three or four years down the track they decide that they want to make Australia their home. They then have a very considerable problem in getting their superannuation benefits from their overseas fund into Australia.

I had a case the other day where I was advising a person who had moved from overseas who was looking at transferring his superannuation benefit into his Australian fund. After a few numbers I had to advise him that if he did that he would face a tax bill of close to \$100,000 and that he could not pay that from his superannuation benefit because that would be preserved in his Australian superannuation scheme. So somehow he has got to find \$100,000 to finance his tax bill while his money is tied up in his superannuation fund. In effect, why would he transfer his money to his Australian fund?

CHAIR—People who come out here who have worked both overseas and within the UK are very much disadvantaged. It does not pay to bring their super with them or have it invested here in Australia, which is ridiculous.

Mr Ward—That is right. If you come from New Zealand, the New Zealand authorities would allow you to take your benefit, or part of your benefit, in cash so it is not so much of a problem except for cases where the person does not get the right advice and just decides to transfer it and then he is really stuck. The UK is more difficult because the UK requirements only allow transfer of the benefit to an Australian superannuation fund; they do not allow it to be transferred in cash.

CHAIR—That is fair enough.

Mr Ward—The other term of reference is the superannuation guarantee. Almost all of our clients pay contributions regularly through the year—it makes sense. We see no logical reason that regular payments through the year should not be required across the board. But we believe that some changes to the superannuation guarantee legislation are necessary before that occurs. The SG legislation is also very complex. Even the most conscientious employer is going to make mistakes from time to time. The number of these minor breaches will increase considerably if contributions are required to be paid quarterly or monthly. They will increase further with choice of fund. The employer by mistake will pay the money to the wrong fund or he will pay it three days late.

The problem with the current system is that it builds in inefficiency. If an employer does not pay on time, he currently has to pay the shortfall amount—which, by the way, is based on a different calculation method than the normal contribution—but he has to pay that to the Taxation Office. The tax office then issues a voucher to the employee, if they can find him. The employee then has to take the voucher to the superannuation fund. The superannuation fund then has to take it back to the tax office to redeem it. Wouldn't it be much easier and much more efficient if the employer could pay the contribution, albeit late, straight to the superannuation fund, perhaps with interest? It would save a hell of a lot of administrative paperwork chasing around, and it would get the money where it belonged in a much shorter space of time. At the same time, you could build in a new penalty system that would penalise those employers that were consistently tardy, yet allow some concessions for those where it is only a minor administrative breach. They are our preliminary remarks.

CHAIR—Would you mind taking on notice a document, a disclosure model, that was tabled by a previous witness from the Industry Superannuation Funds Forum? If you would not mind taking that on notice and giving us your view on it. At the roundtable, I think either Mr Walker

or Mr Ward quantified in dollar terms some of the increases in benefits that are likely to occur as a result of a one per cent increase in returns. It is just an addition to your presentation this morning, which I think dramatically emphasises the efficiency of getting the right fund managers.

Mr Walker—I think that was me. I was illustrating the importance of the investment policy decision by a superannuation fund and showed the range of the sorts of investment policies out there, and would have quoted over a working lifetime differences in benefits of the order of 50 per cent.

CHAIR—But you actually quantified it in dollar terms as well.

Mr Walker—I cannot recall whether I did that in dollar terms but I know that—

CHAIR—Was it you, Mr Ward?

Mr Ward—I cannot recall.

Mr Walker—But I remember the chart I used for that quite well and I would be pleased to forward it to the committee.

CHAIR—That would be great. Thank you.

Senator HOGG—Could I just go back to your comments on the global financial centre and the problems with superannuation—and this is not an area of my knowledge. How would that be fixed—by a number of treaties or is it a process that will take a long time to resolve, or is it just an Australian problem?

Mr Ward—If we go through the treaty approach, it will take a very long time to fix because it is obviously going to take a long time to come up with treaties with a whole range of countries.

Senator HOGG—The reason I asked that is that I want to know if it is a two-way problem.

Mr Ward—In some instances, it is a two-way problem. It is very easy, for example, to get money out of a New Zealand superannuation fund. So, if we are talking about transfers between Australia and New Zealand, it is very much a one-way problem. If we are talking about the UK, the UK has what I would consider a reasonable approach in that it allows transfers to an overseas superannuation fund. It would be relatively easy to fix the Australian system so that it allowed transfers to an overseas fund rather than paying it out in cash. If we look at transfers from the US, that is a little more difficult because the US has somewhat more restrictive requirements on getting money out of some of its funds than the UK or New Zealand. It does vary very much from country to country. You have got other countries where there are virtually no requirements. You have got other countries where there is virtually no equivalent to superannuation. But I think a treaty approach will take far too long to solve the problems that are coming up at the moment.

Senator HOGG—All right. So there are some relatively simple changes that you see can be made to existing legislation in Australia which will cover the vast majority of cases and there may well be a need in some instances for a treaty approach where it works both ways. I was just trying to get the process clear, more than anything else.

Mr Ward—For example, one change I would recommend would be to allow preserved benefits to be transferred to an overseas superannuation fund rather than being paid in cash. A second change would be to change not necessarily the tax amount but the tax treatment when money is brought into Australia so that at least the member has the ability to pay the tax.

Senator HOGG—On that issue of the transfer of preserved funds to an overseas superannuation fund, one of the concerns would be that the reason for preserving those funds while they were within our borders was the fact that those funds should be set aside for retirement. If people have the option to transfer overseas then one might say that the sharpies out there will start to use this as a means of cashing in their superannuation funds at an early stage.

Mr Ward—Again, that will vary from country to country. If you were transferring it to the UK, for example, it would be difficult to get it out of the UK fund. But, yes, I take your point—there are some countries where that could be an issue. Is it something, though, that the Australian government should be concerned about when the person that we are talking about is, say, a US citizen who is unlikely to ever return to Australia? If it is an Australian citizen who may well return to Australia there may be a different issue there.

Mr Walker—I would add, Senator, that the point you make puts a case for a condition on the transfer, either way—

Senator HOGG—I can see the argument that you are putting forward and I am not trying to knock out the ability; I am just looking at any difficulties. If I can return to the complexity issue that you raised about superannuation in general, I put it to someone else earlier this morning that there needs to be a period during which the people who are receiving superannuation as a benefit have to mature so that they can understand even the broad concept of superannuation when they are confronted with investment choice, choice of fund and so on; that their ability to come to grips with the sheer complexities of superannuation is really a generational issue. If people have the benefit of superannuation and they grow up with it, then they grow to know and understand it. It is not something that, no matter how massive an education campaign one runs, one is going to have conversions to overnight, firstly because of the complexities, but also because of the nature of the consumers out there who do not necessarily have the skills available. Is that an argument or reason for taking change slowly rather than accelerating change?

Mr Walker—I will make a couple of points, and I want to express myself well here. First of all, the point you make about this generation not having been exposed before and having to come up to speed, as it were, should influence the type of change. I do not believe it offers a case for not making good change, and it will influence the type of change. I would also add that the current complexity is making it a lot harder for the current generation because they lose the wood for the trees.

People go along to a financial adviser at the time they receive their benefits. They pay a fair bit of good money for the consultation in the end. In an ideal system that consultation would all be about your needs and how your money should be invested. You should not be wasting a hell of a lot of time saying, 'How are we going to navigate the tax and legislative morass?' Basically, there are two routes to an outcome. One route will involve you in paying all this unnecessary tax or all this extra regulation but a circuitous route will get you to the same spot and you will be better off tax wise. It really is the tail wagging the dog a bit. I would suggest that the points you raise make it ever more important that we get rid of unnecessary complexities so that these people can focus on the key issues that are going to produce a better retirement for them. It is an emotive term, but we do not want another lost generation.

Senator HOGG—How do we achieve that?

Mr Walker—You do not achieve it by going through that with a red pencil and crossing this bit out and that bit out. A lot of simplicity could be achieved by government looking at what we want this system to achieve. We have made some broad policy decisions already. It is going to involve member choice and member decisions. Get rid of all the unnecessary complexity and go back to first principles. I do not mean go back to square one. Just cut out red tape and focus on what is important. Do not keep the whole class in for the one in 10,000 that is going to cheat the system. A lot of what we have talked about with expatriates is intended to avoid any single person rorting the system, but in the process you are making it difficult for the 99.9 per cent of people who have no intention of rorting the system and just want to go about their lives and do the right thing. I think it needs a fair bit of head work, time and effort to bring it back.

Senator ALLISON—Mr Ward, I wonder if you could expand on the remarks you made about trustees not taking up binding death benefits opportunities. We had an inquiry in this room where it was said when we were looking at the bill for same sex couples that binding death benefits were pretty well the normal arrangement these days. I was surprised to hear you say that few trustees have taken that up. Can you just expand a bit, please, on that issue?

Mr Ward—We get involved with several hundred corporate superannuation funds. I would be guessing but I would say the number of those that have taken up binding death benefit nominations would be under 10. We also operate a financial planning arm which has a list of recommended superannuation trusts that it will advise its clients to go into. I think the last time I looked about four out of 15 of those funds had elected to adopt the binding death benefit nomination approach. We certainly have not seen any real movement to accept it. What we do hear back from our corporate clients are the complexities involved. That is the major problem.

Senator ALLISON—You made some recommendations in the range of the topics you have addressed but not that one. Do you have some suggestions to make about how there should be simplification?

Mr Ward—I think one of the biggest problems with the binding death benefits is that the nomination has to be renewed every three years. That creates administrative problems in that you need to get out to your members before the three years are up. The member needs to respond. It needs to be recorded on the system. It needs to be advised to members on their benefits statements and so on.

Senator ALLISON—Would 10 years be more appropriate?

Mr Ward—When you look at a will, it is in effect indefinite. I cannot see why there is a need to have something more onerous on a superannuation fund death benefit than what is on a will, bearing in mind too that, under the regulations, the trustee has to tell the member at least yearly what his nomination was, which does not happen with a will. So, on an annual basis, the trustee is advising the member who is nominated. It seems pointless to also have to go to members and say, ‘Sorry, it’s now almost three years since you last told me, please tell me again.’

Senator ALLISON—Even though he or she has done it every year, in any case. Is that what you are saying?

Mr Ward—Normally the member would not respond. They get the advice on their statement and, assuming that that is still the particular person they want their death benefit to go to, they do not have to do anything—but every three years they have to.

Senator ALLISON—Every three years they will have to?

Mr Ward—They will have to come back to the trustee and say, ‘Yes, I want to reconfirm.’

Senator ALLISON—What happens if they don’t?

Mr Ward—Under the current rules, their nomination becomes invalid, null and void.

CHAIR—Thank you very much, Mr Ward and Mr Walker. It is excellent evidence and we appreciate your giving your time to be here and the time taken to present the evidence.

Proceedings suspended from 12.41 p.m. to 1.31 p.m.

OGILVY-O'DONNELL, Mrs Fiona Alexandra, Private Capacity

CHAIR—We will resume and we welcome Mrs Fiona Ogilvy-O'Donnell. We have had quite extensive correspondence with you. Would you like to speak your submission?

Mrs Ogilvy-O'Donnell—Certainly. I would like to begin by thanking the Senate for giving me the opportunity to appear and for, in fact, holding the inquiry. The subject that you are inquiring into is obviously something of significant relevance given the experience that we have been through in relation to the embezzlement of my father's superannuation. I am really hopeful that the report and the recommendations that your inquiry comes up with, will do something to be of assistance to future victims of superannuation fraud, and that some of the lessons that we have learned may be of assistance to you in putting together your report and your recommendations.

By way of background, the majority of my father's superannuation assets were embezzled by an employee of Towers Perrin over a period of seven years. The fraud was discovered in December 1996. In April 1997, my father died of a massive heart attack and, as executors, it fell to us to attempt to restore the assets of his super fund in order to wind up his estate. In March 1999, we had to issue legal proceedings against Towers Perrin in the US and Australia and the trustees involved in the Victorian Supreme Court. That matter has now been settled through a court ordered mediation that occurred in March this year. The matter of settlement is confidential and I will not, obviously, be discussing any of those details or aspects of that settlement.

CHAIR—Did you get all your money back?

Mrs Ogilvy-O'Donnell—I am not at liberty to discuss any aspects of the settlement, I am sorry. I come here with a strong personal belief that there are issues that the Senate can consider in respect of the processes that result from superannuation fraud and the impact that has on victims of fraud. I stress that I come here in my own right, I do not come representing the other beneficiaries or executors of my father's estate.

I suppose the first point I would like to make is that, with superannuation being a compulsory retirement policy, it is likely in the future that frauds will not be discovered until the point of retirement. That, of course, means that we are talking about aged members of the community having to come to grips with the fairly devastating experience that the majority of their retirement income is no longer available to them at that point in time. We needed to spend significant amounts of resources in terms of gaining legal and accounting advice in relation to the fraud in order to pursue our father's rights to appropriate reimbursement of his assets. I think that without the resources, the advice and the determination to see that justice was done, there was a likelihood that the outcome would not necessarily have been as just. Despite the fact it was achieved in an enormously long time, I cannot see that without the resources and advice that we had, the settlement would have been as easy or as favourable, perhaps, as it was.

CHAIR—Why? Because of contributory negligence or what?

Mrs Ogilvy-O'Donnell—The first problem that we encountered was, in fact, that the superannuation fund had not been established as a regulated fund. It was established in 1987 and the embezzlement did not occur until a couple of years after that. So there were issues about what the status of the fund was. That, in itself, raised enormous accounting issues and that required two of the major accounting firms—one in respect of Towers Perrin and one in respect of us—to try to determine what the status of this fund was going to be. There were clearly then quite significant implications by way of taxation because, if it was not a regulated fund, there was potential for us to face massive penalties.

CHAIR—Was it a complying fund or a non-complying fund?

Mrs Ogilvy-O'Donnell—It was an excluded fund and it was not established with the Insurance and Superannuation Commission and given a complying and regulating number. There were some funds that were not embezzled and when we gained trustee responsibility of those in May 1999, through a court order, we wrote to APRA and asked 'What is our responsibility now as trustees?' That was when it was pretty clear from the correspondence, which I did include in the submission, that we did not have a fund that was complying and there was nothing much they could do to help us.

I accept that future fraud probably will not occur in those sorts of circumstances but a fraud will lead to significant questions and accounting questions. One of the big ones obviously was to do with the fact that there were questions about what Dad would have done with his money at the time of his superannuation terminating. His superannuation had in fact terminated in January 1996. He died in April 1997. There was a series of many months where he was unable to actually ascertain where his superannuation funds were located. So there were significant issues around the way in which he might have used his funds on retirement, and then how that was going to be dealt with in a taxation manner.

CHAIR—So what you are suggesting is that the trustees should notify the beneficiaries on an annual basis whether their fund is a complying fund?

Mrs Ogilvy-O'Donnell—I would have thought that most people would assume, as my father did, that if you put your funds, under a trust deed, in the hands of a company that he had chosen because of its reputation and its credentials, this would have been a complying fund.

CHAIR—I asked the question because if he invested it with a particular firm—say, in a unit trust—there are different consequences compared with investing it in a superannuation fund. Did the documentation that you were given indicate it was a superannuation fund or what type of instrument he invested in?

Mrs Ogilvy-O'Donnell—It was quite clearly a superannuation fund. It was a personal superannuation fund. The second point that I would like to make, I suppose, in respect of people who become victims of fraud is the role of the insurance in that. From the submission that Towers Perrin has put in, as well as in the article from the *Age* in December 1996, it is very clear that high priority is placed on the existence of the crime fidelity insurance designed to protect clients in the event of a fraud. The insurers, because of Towers Perrin's American-based status, were in fact a multinational insurance company based in the USA. It really became pretty

apparent to us from the beginning that the insurers were driving the resolution of this matter and that, instead of the relationship being one of us as representatives of our father dealing with Towers Perrin, who had a trustee responsibility to him, we were now dealing with insurers who, in fact, had no trustee relationship with us and who had a particular commercial agenda and relationship with Towers Perrin. I think that, possibly, if it had been possible to deal directly with Towers Perrin, as distinct from the insurers, they would have been at greater liberty to make good the breaches of trust, to admit liability and restore the funds more expeditiously than what occurred, but it was a case of us now dealing with insurers.

If crime fidelity insurance is taken out to protect superannuants, then one of the things that could be looked at is the way in which the superannuant's interest could be noted on the insurance policy. Clearly, it was not our fault, dad's fault, that his funds got embezzled. It was a requirement that people put their money into superannuation, and when that money gets embezzled the superannuant really is the innocent victim in all of this. The machinations between the fund's managers and the insurers is really something that should not stand in the way of restoring the assets of the superannuant.

I really think that whilst that insurance is said to be there to protect the superannuant, and everybody would obviously advocate that there is insurance in place, there is no immediate settlement of this matter. It is complex to try to sort out what goes on in a fraud—nobody would deny that. Those processes have to be gone through. But my father was in a position that would be different from many superannuants in this country. They just would not necessarily have the resources. What do they do in the immediate to medium term in order to survive? If this is their retirement income, they assume they are going to be living on it from the day their work terminates. If it is not there when it is due to terminate, they have no resources to fall back on. But they need resources in order to deal with the financial, accounting and legal issues that they will confront.

Whilst I listened to some of what was said this morning, and it is acknowledged that fraud is a small component in the overall funds that are under management, when it happens, let me tell you that it is a devastating experience. It is a devastating experience, and it is one that saps enormous amounts of energy and time. It is a stressful and intimidating experience as well. Therefore, there has to be something done. I think governments have accepted the responsibility that they want people to invest in super, and that is fine, but where does a government's responsibility lie in the situation of a fraud or an embezzlement in respect of the rights of those people to access their money?

The third thing, and one of the reasons why it has been important to put in the submission, is that, clearly, my father specifically chose Towers Perrin. He was aware of their international reputation and their actuarial credentials. Obviously, many corporate and public sector and industry funds also shared his view about Towers Perrin's ability in the industry. They hold a predominant position of trust. I have still some difficulty in accepting that an embezzlement went on in this company for seven years without there being any apparent signs, any apparent indication through audits, or any quality assurance or risk management strategies in place that were capable of identifying this fraud over that period of time. For that reason I think that we need to be conscious still of the need for ongoing prudential supervision in respect of the trustee

situation. Of the trustees, of which there were two, one has always denied that he was a trustee despite the fact that—

CHAIR—A trustee of?

Mrs Ogilvy-O'Donnell—A trustee of my father's superannuation fund.

CHAIR—Was that an independent trustee?

Mrs Ogilvy-O'Donnell—He was an employee appointed by Towers Perrin from within the company.

CHAIR—Okay.

Mrs Ogilvy-O'Donnell—There are those issues that I heard people talking about this morning in respect of whether people are aware of the responsibilities that they carry. I find it difficult to believe that this particular trustee was so aware. Also, I think there is an issue in respect of the banks because, clearly, the embezzlement did not happen in isolation from the banks. The ANZ Bank was the holder of my father's superannuation fund account. It was a clearly marked account, and there were obviously significant sums of money moving through and out of that superannuation account over a long period of time. I think it is important that there be a closer relationship, obviously, between superannuants and the banks in respect of individual accounts. That may not be the case where you are talking about large funds where there are multiple members.

CHAIR—Was there an independent custodian holding the assets?

Mrs Ogilvy-O'Donnell—In what sense?

CHAIR—Of the superannuation fund?

Mrs Ogilvy-O'Donnell—It was in a trust deed. There was a trust deed set up to manage the fund, there were trustees appointed, funds flowed in and investments were made.

CHAIR—But who held those investments—an independent custodian?

Mrs Ogilvy-O'Donnell—They were invested in funds in investment management by investment managers, but the trustees were responsible. There is a series of recommendations in my submission which I am happy to go to, or you may want to ask me some questions about it.

CHAIR—Any further comments?

Mrs Ogilvy-O'Donnell—No, I will leave that there for the moment.

Senator SHERRY—What was your father's occupation?

Mrs Ogilvy-O'Donnell—My father had been a chartered accountant. He had retired from Ernst and Young—which was Arthur Young at that stage. He was a non-executive director of a number of boards of public companies in Australia.

Senator SHERRY—Given your father was a chartered accountant, obviously he had some reasonable level of financial knowledge. There is a proposal to deregulate fund membership in Australia—so-called choice. How do you think eight million Australians are going to cope with having to make fairly complex financial decisions about membership, trust deeds and investment strategies? How do you think eight million Australians are going to cope with those sorts of requirements, given the situation you have been through or your father went through?

Mrs Ogilvy-O'Donnell—I think that the choice debate is really a complex one. I am certainly no technical expert, despite having to try to get my head around superannuation in a way that I would prefer not to. There is no doubt that this issue is enormously complex for the everyday Australian. My father was skilled in this area. He chose to put his superannuation into a superannuation arrangement with Towers Perrin because he did not really want to have to manage that part of his retirement income. I think that that is really one of the reasons that we have super—that we are encouraging people to make provision—and we are now caught in this bind about what to do in respect of people given that trustee relationship—

Senator SHERRY—I was going to come to that, and I am not criticising your father. I am just interested in the issue that, in a so-called choice environment, everyone is supposed to be informed, well educated, able to make these sorts of decisions which are quite complex, and yet you have a situation where your father, who was a chartered accountant, who would have greater knowledge than most people in the community about this, could not identify—and I am not blaming him—this particular fraud in the way it occurred until it was too late.

Mrs Ogilvy-O'Donnell—That is right. He did get reports, obviously, but they were largely fictitious as it proved in the end, and I guess that that raises questions about how, when you hand your money over and you are in a trustee relationship and you actually want to exercise and believe in the trust and you can't, it is very difficult.

Senator SHERRY—I will get to that issue about the solutions, or possible solutions, but do you think that the person in the street, who has very limited information, is going to be able to make these sorts of decisions?

Mrs Ogilvy-O'Donnell—I do not think so, but I do not think that that necessarily means that there are not ways that the choice debate cannot be pushed forward, but it is a complex question that has obviously come through in many of the submissions and representations.

Senator SHERRY—You may not be aware, but under the SIS Act there is provision for compensation in the event of theft and fraud. From what you are saying, the fund did not exist; it was a fiction because of the fraud. I assume, therefore, that the fund or whatever existed would not have been compensatable under the SIS Act. Is that the situation?

Mrs Ogilvy-O'Donnell—Yes.

Senator SHERRY—You did touch on the issue of superannuation being compulsory but, in your father's circumstances, it would not have been compulsory; he would have chosen a personal superannuation fund. It was not as a consequence of the superannuation guarantee, was it?

Mrs Ogilvy-O'Donnell—No, it was as a result of superannuation payments that were coming from directorships.

Senator SHERRY—But he took an active decision to have superannuation arising from his employment and the need to put money aside for his retirement?

Mrs Ogilvy-O'Donnell—Absolutely, yes.

CHAIR—We very much appreciate the stress or difficulty you are under in coming before us today and I do ask members of the committee not to push Mrs Ogilvy-O'Donnell past the area of her particular interest in terms of the wider agenda that is before us.

Senator LIGHTFOOT—You mentioned in your background reference on item 3 an alternative approach to tax deductability of legal expenses. I think the law as it stands now is that accountancy fees are totally tax deductible and some legal fees are tax deductible. Do you mean that legal fees should have a similar deductability to that of accountancy fees? Is that what you are saying there?

Mrs Ogilvy-O'Donnell—What I am saying is that, in a future case of fraud, if the victim of fraud is not a company but just an individual—one of the eight million—their legal fees should be deductible. If they have had their super funds defrauded and they are forced to get legal advice and go down the track of litigation, at the moment they do not get tax deductability for their legal fees, while companies do.

Senator LIGHTFOOT—That is interesting. It is very similar to not having the ability to claim your expenses if you defend yourself in a court should you win the case, but if you have a lawyer you can claim your legal fees. What of the other superannuants? Have you heard of any other fraud cases? You mentioned a figure, halfway through your contribution here this afternoon, but have you heard of any specific superannuants who have suffered similarly to your father?

Mrs Ogilvy-O'Donnell—From what I have read in the press, there have obviously been other examples of fraud, but certainly my father's was an excluded fund. It was a single person fund. I have no knowledge of any other fraud in respect of Towers Perrin or this employee, if that is what you are asking.

Senator LIGHTFOOT—Being from Western Australia, which is virtually another continent, I have not heard of the company with which your father deposited his super funds, the actuaries Towers Perrin, but you spoke as if we should have heard of them. You spoke fairly highly of the regard that your father must have had for them. Perhaps you could tell me something as to why that position was attained?

Mrs Ogilvy-O'Donnell—Because of the way in which he talked to me about them and, secondly, because they are a very large actuary in the superannuation industry in Australia. They are also a very significant company in America, being, I think, about 146th on the Forbes 500 scale. They are not an insignificant operation by any stretch of the imagination in funds actuarial services or risk management asset consulting and communications here in Australia.

Senator LIGHTFOOT—I have not noticed the shingle in Hannan Street, Kalgoorlie, and that is why I asked. You said that it went on for seven years.

Mrs Ogilvy-O'Donnell—Yes.

Senator LIGHTFOOT—That seems an extraordinary amount of time for a company with the high repute that your father obviously held them in. Why did it go on for seven years when an audit is required every year?

Mrs Ogilvy-O'Donnell—I think that would be a matter that you would have to take up with Towers Perrin.

Senator LIGHTFOOT—Put it this way: were you surprised that it went on for seven years or is that an understatement?

Mrs Ogilvy-O'Donnell—My father was devastated, absolutely devastated. He died four months later.

Senator LIGHTFOOT—You are inferring that the stress perhaps contributed to his death?

Mrs Ogilvy-O'Donnell—The stress of this sort of discovery for any person on retirement is a significant burden. That is one of the reasons that I think it is important that the Senate give consideration to what can be done because I do not think that people are equipped to cope with what they may have to face as a result of super fraud. I do not think we can just stand by and say that it is nobody's responsibility.

Senator LIGHTFOOT—Did the embezzler target only your father—

Mrs Ogilvy-O'Donnell—I have no knowledge of any other.

Senator LIGHTFOOT—Do you have any knowledge as to where was the weak spot, where was the fundamental flaw in the system that allowed him to target your father for so long?

Mrs Ogilvy-O'Donnell—I think, again, that it would be a matter that Towers Perrin would be better able to talk to you about. They indicated that they did an independent review. They appointed an independent auditor and undertook a review but I am not aware of what they found out.

Senator LIGHTFOOT—We had evidence before the luncheon break that there are some \$500 billion of super funds in the loop. Do you have the impression that, because super funds are so prolific these days, there is almost too much investment for the auditors and accounting

firms to handle in a proper fashion, a fashion that perhaps would have been more detectable a decade or so ago?

Mrs Ogilvy-O'Donnell—I am really not in a position to answer that sort of question. All I can say is that, in respect of my father's situation, the mechanisms that one would expect to be in place to detect what was going on obviously were not there. That is a concern. If it happens in respect of one person, then that is a worry to me. It is a worry to me not only because it was my father and that it has involved us in an incredibly difficult, stressful and protracted period but also because I really do not want to see this sort of thing happen to somebody else.

Senator LIGHTFOOT—Was there ever a chance, because of the uncooperative nature of other parties, that you may not have been able to bring this to a satisfactory conclusion?

Mrs Ogilvy-O'Donnell—There is no question that there was complexity in respect of it; fraud investigations had to be done—

Senator LIGHTFOOT—By whom?

Mrs Ogilvy-O'Donnell—By the fraud squad.

Senator LIGHTFOOT—That is the state police?

Mrs Ogilvy-O'Donnell—Yes. The employee is now in jail. There were issues about the fact that the fund was not regulated which raised all sorts of questions about how the funds were to be treated, how the payments were to be treated and the ATO had to be consulted in terms of private rulings. I think that the issue then is that this thing moves into an insurance arena. Communications were conducted between lawyers and not between the parties particularly. There was, in my view, a change in the relationship in the sense that the insurers seemed to me to have control of the agenda, and that made the whole situation more protracted and more difficult. It was not possible for Towers Perrin to admit liability for quite some time down the track.

Senator LIGHTFOOT—Did you form the opinion that Towers Perrin were invulnerable because of the access that they had to some of the nation's—and, in fact, internationally—best lawyers, and that you did not have that same opportunity?

Mrs Ogilvy-O'Donnell—As I said, we drew on significant resources to obtain legal and financial advice. I am not in a position to comment about what Towers Perrin did.

Senator LIGHTFOOT—What about the insurers? Did you have some apprehension about whether you would be able to take them on as well?

Mrs Ogilvy-O'Donnell—Anybody who enters litigation does so with trepidation, I would have thought. We were in a position where we were executors of an estate; we had a responsibility in respect of beneficiaries, and we had to make decisions based on the legal and financial advice that we got. The process was protracted. It is not an experience I would wish on anybody.

Senator LIGHTFOOT—Notwithstanding the trauma which it quite obviously has created both from an emotional point of view and as a result of the loss of your father's lifetime savings—the temporary loss at least—and notwithstanding the protraction of the case, are you satisfied that in the end the checks and balances actually worked and there was a satisfactory outcome, all those other things aside?

Mrs Ogilvy-O'Donnell—As I said before, I am not able to comment on the settlement. What I am saying in the submission is that I think there needs to be something done in respect of ways in which superannuants can be protected in respect of the fidelity insurance that exists where a fraud happens. What happens is that they get dragged into the commercial dealings between the insurer and the funds manager or the actuary or whatever, and all of that overrides their interests in the sense that they basically want their retirement income back. They do not really want to be caught up in the machinations of the insurance 'workings out' that have to go on between the respective parties. It is, after all, their retirement income that they are trying to get back.

Senator LIGHTFOOT—For my last question: what was it that attracted or enticed your father to invest with the actuaries?

Mrs Ogilvy-O'Donnell—As I said before, due to his professional work he was well aware of arrangements within superannuation. It is my view that he selected Towers Perrin because he believed that they had a good international reputation. He had spent time working in America and he was aware of them, and he was confident of their actuarial credentials.

CHAIR—Not being a regulated fund, it would not be subject to the concessional tax treatment.

Mrs Ogilvy-O'Donnell—That was the problem.

CHAIR—Do you have a comment on the consequences of it not being a regulated superannuation fund? What happened? Did they pay tax on the income?

Mrs Ogilvy-O'Donnell—That was obviously part of the settlement arrangements. I cannot talk about it, but obviously it was part of tax rulings that had to be sought as well in respect of what the tax office would think about these funds when they were restored and what status they would have.

CHAIR—Did your father get regular statements from Towers Perrin?

Mrs Ogilvy-O'Donnell—Yes, he got an annual statement.

CHAIR—Did it show the tax consequences of what happened?

Mrs Ogilvy-O'Donnell—He certainly got some statements in respect of it as it came close to termination, yes.

CHAIR—What did that reveal? Did your father become aware of the tax quantum on the statements? Did that raise any signals to him?

Mrs Ogilvy-O'Donnell—The statements were largely fictitious. They were fictitious statements.

Senator HOGG—I have a few questions. Did your father engage anyone to review independently his superannuation commitments?

Mrs Ogilvy-O'Donnell—No.

Senator HOGG—Did he ever think of having that done?

Mrs Ogilvy-O'Donnell—No.

Senator HOGG—The second issue is that in your submission you raise the fact that the recurrence of fraud is a reality within the Australian superannuation industry. Given that there was a degree of prominence surrounding your case, with it being reported in the popular media, did any people approach you about their experiences and not your specific case as such?

Mrs Ogilvy-O'Donnell—No, because all the press coverage did not identify my father.

Senator HOGG—Pardon my ignorance here. Did it identify you? Did it identify anyone?

Mrs Ogilvy-O'Donnell—No, it did not identify the client, who was my father. It identified the employee and the company.

Senator HOGG—So there was nothing there that would have drawn attention to either yourself or your father. What led you to the conclusion that fraud is a reality within the Australian superannuation industry? Was it this one instance or do you have other anecdotal evidence?

Mrs Ogilvy-O'Donnell—Certainly, that statement is made on the basis of this experience, but I have read in the press, as you no doubt have too, that there are other areas where there have been problems with superannuation fraud.

Senator HOGG—I come to the point that you made about fraud only being discovered at the point of retirement. What draws you to that conclusion? If people are undertaking independent reviews of their superannuation, it may well be that one of the things that has to be recommended to them is that where they are in the circumstances of your father—and I know it is easy in hindsight for me to say this—they be made aware of the fact that, whilst independent reviews of their superannuation holdings might cost them an amount of money, nonetheless they may avoid the sorts of circumstances that happened to your father.

Mrs Ogilvy-O'Donnell—I understand the point you are making. I think that if we assume that most of us put our money into superannuation and believe that it is being managed in a way that is competent and not at risk, which I think would be the majority assumption, we are not going to get into the game of trying to double-guess the people in whom we have placed the trust in the first place. If we say we have to get into the game of conducting independent

reviews of our own superannuation, I wonder whether that would not reduce the responsibility that trustees feel.

Senator HOGG—Let me give my experience. I was a trustee of a small fund managed at one stage by Towers Perrin. We felt no inhibitions at all in having an independent review made of the managers of the fund by someone completely unassociated with Towers Perrin to ensure that Towers Perrin were delivering what they said they would. That is why I raised that issue of independent reviews. I suppose it gets to the issue of: how many independent reviews do you do and can you afford to do?

Mrs Ogilvy-O'Donnell—That is right. And should you have to?

Senator HOGG—Yes, I accept that. You said the fraud squad were involved. Was that the state fraud squad or part of the federal police?

Mrs Ogilvy-O'Donnell—No, it was the Victoria fraud squad.

Senator HOGG—This raises the issue of jurisdictional issues, which I am not an expert on. I do not know if there needs to be a special fraud squad at the federal level.

Mrs Ogilvy-O'Donnell—I do not know. I am not in a position to comment.

Senator HOGG—It just raises that doubt in my mind. Undoubtedly, someone who has legal background will be able to apprise me of that.

CHAIR—Mrs Ogilvy-O'Donnell, it has undoubtedly been difficult for you, but thank you for your presentation.

[2.10 p.m.]

LOCKERY, Mr Kenneth Norman, Principal, Towers Perrin

CHAIR—Welcome. It has been some time since we have had you before the committee. We have your submission, which is under the name of Mr David Solomon. Given the scope of the inquiry, feel free not to limit yourself just to the particular court case which has affected Towers Perrin. Given your global ramifications and your involvement in the Australian superannuation industry, we would also like your comments on the general matters that are under reference. I invite you to make a short statement.

Mr Lockery—Thank you. The committee has quite broad terms of reference and my primary aim is to speak to one very specific issue, that being fraud in superannuation funds. I had not come prepared to speak about other specific issues, but if the committee has any questions in regard to other areas I would be more than happy to address those.

As you have heard from the previous witness, Towers Perrin has first-hand experience in the matter of fraud in superannuation funds via the actions of an employee of the firm. There are probably six key points that I would like to make in regard to fraud. The first is that I strongly believe that fraud will occur in superannuation and that no amount of regulation or supervision and no level of procedures and systems by organisations involved in the superannuation industry can entirely prevent fraud. As a result, the second point is that there is a balance to be drawn between the need for regulation and supervision, which certainly exists, to discourage fraud and the cost to funds of excessive regulation because, at the end of the day, any cost to funds of excessive regulation is a cost to the members of those funds and a reduction in their retirement incomes. And given that I am of the view that such regulation can never be fully effective, somewhere one has to draw the line between trying to further tighten regulation and the cost that will be incurred in doing so.

Senator HOGG—If I could just stop you on that point, do you have a cost analysis?

Mr Lockery—No.

Senator HOGG—Do you have a model that gives an analysis of where it becomes cost prohibitive and where it becomes cost effective?

Mr Lockery—No. I think you would need to look at specific proposals for further regulation to actually come to a conclusion on what were the costs of implementing those regulations within the industry as opposed to what situations they were likely to address.

My third point is that, at the end of the day, the best protection for members of superannuation funds is the commitment and the financial resources of the organisations they use, and I include there the insurance arrangements of those organisations. In our case, I believe we acted promptly and compassionately to meet Mr Ogilvy's immediate financial needs and to ensure that restitution was made. Fourthly, we support the concept of speedy resolution of such matters, yet we also recognise that this is a difficult issue. Despite our best endeavours, recognition of the rights of Mr Ogilvy's beneficiaries to due legal process meant that this case

took over three years to resolve. The problem is: how do you achieve a more speedy process without overriding the rights of the parties in that regard?

Towers Perrin sincerely regrets that this fraud occurred and reiterates its commitment to the protection of its clients. I have to say finally that in terms of our dealings with Mr Ogilvy between December 1996, when the fraud was discovered, and the time of his death, it was our view that at all times he was more than satisfied with the approach we were taking towards resolution of the matter. That is all I would like to say, thank you.

CHAIR—Perhaps I think it should be said for the public record that Towers Perrin was also pleased that settlement for the full restitution was received, and while the executors rejected the calculation of restitution as offered by Towers Perrin and proceeded with legal action, the independent expert appointed by the courts subsequently ratified the Towers Perrin calculation. Seeing that the matter has come before the committee, I think it is appropriate that I make those two statements. At the same time, we take on board Mrs Ogilvy-O'Donnell's concerns about consumer protection.

Mr Lockery—I should just say that, on the point you mentioned about the special referee's confirmation, I think it is clearly set out there that it was a confirmation of the approach to be taken to determine the loss. I do not think there is a suggestion there that the figures were necessarily identical or anything like that.

Senator HOGG—In respect of the process, is there any way that there can be a fast-track process to resolve these sorts of issues? Invariably, as has been rightly raised, they will happen to people as they reach that crucial time of retirement and invariably the funds in question are the funds that they have put aside for them to be secure in retirement. So it is not as if they can go back out into the work force and start again. I am raising this because it is a special set of circumstances, where a person has reached, in a sense, the finality of their employable life in the work force. Bearing that in mind—and I am not trying to just particularise it to the case in question but rather to give it a broader nature—is there a fast-track mechanism which can be put into place and which may well, even in some instances, only give interim relief on a no liability basis for either party, but nonetheless in some way go to mitigating the circumstances that the person finds themselves in? Have you put your mind to that issue and come up with any fast-track process? I am not talking about a process whereby you concede liability or anything else, but a fast-track process which will somehow in some way restore at least a certain amount of hope for the claimant in those circumstances.

Mr Lockery—I think it is a difficult issue. I should say in the first place that the issue of this being a problem at retirement is essentially a problem for small or single member, and in this case excluded, funds in the sense that if there is a fraud incurred in a fund with many thousands of members, while there may be some members approaching retirement, whenever it is discovered, the majority of the members will not be so. This issue of it being a problem at retirement essentially comes down to the small fund area, which is small in terms of number of members but not necessarily in terms of assets.

Senator HOGG—I accept that. I accept also there may well be a specific solution. If you do not have it today, if you would take it on notice, you might come back to us with it.

Mr Lockery—Okay. The only issue which I raise there was one raised by the previous witness about the insurance law type arrangements. I believe that it is in nobody's best interest for a party to invalidate their insurance in the process of coming to an arrangement to protect a beneficiary. Essentially, that is the problem that you get into. It is true that there are certain things you can do and things you cannot do without threatening your insurance arrangements in the process.

I am not a lawyer and I do not know to what extent that is a matter over which effectively the government could have some control by constraining the way in which insurance companies are able to say, 'Admit nothing, do nothing without our agreement in the process.' Obviously, that is a problem at the beginning of the process. I am happy to take the matter away and see if there are people more involved in this direct area than me who can make specific suggestions. But I do think that is a significant part of the problem.

Senator HOGG—I do not think there are any lawyers here. Part of the problem is that once things get into the hands of lawyers, they can bog down irretrievably. Are there any lawyers in the audience? Yes? That is good to see.

Senator LIGHTFOOT—It must have taken an immense amount of courage to put your hand up.

Senator HOGG—Having maligned lawyers, which I am noted for doing, there seems to be a need for a commonsense approach because of the special nature. If you can come back to us with some recommendations, that would be good. It may well mean that on that issue people have to think laterally.

I just raise the other issue. You said fraud will occur in super no matter what amount of systems are put in place to prevent it. What sorts of funds are you looking at there? I would imagine that in many of the funds that would be fairly difficult because of the various regulations and regulatory processes in place.

Mr Lockery—In my experience, fraud occurs in all kinds of financial institutions. Wherever there is money, there are criminals chasing that money and fraud occurs. It occurs in the banking system which is highly regulated; it will occur in the superannuation system. The nature of those things can occur for a whole raft of reasons. Never having thought about how I would go about fraud myself, I have not thought about how it is done.

Senator HOGG—This is not the time to confess.

Mr Lockery—But the experience of the world is that large flows of money attract criminal elements who are very good at finding ways of removing that money and covering their tracks for a period of time. Essentially, that is all one is talking about. It is a question of how long a period of time is spent producing different results, but fraud can occur in a relatively short period of time. Even with the best audit procedures in the world, the auditor is not there every day checking on what is happening. So whether it might be occurring as a result of a staff member of the fund, whether it is occurring as a result of the investment managers of the assets or whatever, it can occur.

I am certainly aware of a case that was reported in the press. I do not know what the eventual outcome of the case was but this was a case where a fund was receiving rollover notifications from members with cheques and the cheques were being diverted; they were never finding their way into the fund. That sort of situation is a little difficult to track down in the short term because what happens is the person receiving the cheques sends out a notification to the individual that the money has been received and included in their account. But the first time the individual finds out about it not being included in their account is the next time they get their annual or six-monthly statement from the fund to tell them that. So a period of perhaps at least six months has passed. By the time the statements can get out it might be nine months or more, during which time this can be done. It is very hard to see what the checks are on that process.

That is just an example, without trying to list what they all might be, that I was aware of where fraud has occurred. It is very difficult to see how many checks and balances you can put in place to cover all of that.

Senator HOGG—Do you have any internal fraud mechanisms to detect where fraud may be taking place within your own organisation and, if so, what is the level of detection? As a witness indicated to us earlier today, it is something that many organisations are very reluctant to even admit to.

Mr Lockery—I am not directly involved in a process where I could say to you absolutely what processes specifically for fraud detection we have in place. That is, there may be processes of which I am not aware. We have extensive processes of checks and balances where there is client money flowing through our hands, so to speak, to ensure separation of responsibilities and all those sorts of issues, as opposed to saying whether we have an annual fraud audit or something like that. I am not aware of such a thing going on. To the best of my knowledge, this is the only case of fraud in Towers Perrin in Australia that I am aware of.

Senator HOGG—Yes, but by your own admission earlier you said fraud will occur in superannuation no matter what amount of systems are there to prevent it. If that is the case, if there is going to be a growth in fraud within the superannuation industry, then it would seem to me logical that people would try to put the appropriate preventative systems in place to detect fraud or at least to deter those who might be prone to commit fraud from doing so. You can take that question on notice.

I do not think we want to necessarily breach the confidentiality of your internal systems and compromise maybe some intricate fraud detection systems that you have in place. That was not my intention. If you need to supply it to us on a confidential basis, I am sure that would be quite within order. You could take that on notice and in that way it then does not become part of the public purview.

CHAIR—Mr Lockery, was it because it was not a regulated superannuation fund that the executors had to deal directly with the insurance company rather than with Towers Perrin?

Mr Lockery—No, I do not believe so. From Mr Ogilvy's perspective, he always believed it was a regulated superannuation fund. It was always intended to be a regulated superannuation fund. The insurers got involved because Towers Perrin had a liability and, where insurers are

covering that liability, then they do get involved. I was not party to most of the actual negotiations, but my understanding is that most of the negotiations were between either the parties themselves or the lawyers representing the parties, as opposed to the actual insurance company personnel or anything like that.

Senator SHERRY—Yes, but they do call the tune, Mr Lockery.

CHAIR—I thought in evidence we were told that one of the stressful features was having to deal with the insurance company rather than with Towers Perrin, which worries us a little.

Mr Lockery—I think there was a concern of it being lawyers in the process rather than, potentially, as Senator Sherry refers to, the process that obviously what the lawyers could commit to or whatever would be constrained by the insurance arrangements.

CHAIR—Why is that? The insurance company is there only to provide the deeper pocket, isn't it?

Mr Lockery—It is. But the insurance policies which are written in this area as I understand it—and I am not an expert on this part of the law—say, 'If you do any of the following things, then the policy is void.' Those 'following things' would include something like admitting liability. If I drive out of here and run straight into the back of another car, my car insurance policy says that it is void if I admit to that driver that I was at fault. I do not know that car insurance companies actually stand by that, but that is what your car insurance policy says. It says it is void if you admit fault. We are not in control of that process. We consider ourselves to be a large international firm, but we cannot control the way in which the insurance industry writes its policies.

Senator HOGG—Is that the sort of case where the other car backs into you rather than you run into the back of the other car? I am really saying: are we playing with words sometimes?

Senator SHERRY—But if an insurer imposes what are regarded as unreasonable obligations by the politicians—the decision makers—the law can be changed to override that, can't it?

Mr Lockery—Yes. But at present, that is standard industry practice in the insurance industry, and it seems to be accepted by the people who make the laws.

Senator ALLISON—Without going into any details, can you tell the committee whether your organisation changed its procedures as a result of this episode?

Mr Lockery—It is a little difficult to comment on because it is not an area of business which we are now in and, indeed, it was not an area of business that we were still in at a time long before the fraud was detected. So while we have put extensive procedures in place to try and prevent fraud in related areas of business that we are still in, it is hard for me to say, 'We've changed procedures in that area,' because we stopped doing business in that area.

CHAIR—What do you mean by 'that area'?

Mr Lockery—Essentially, the management of small superannuation funds.

CHAIR—So you are no longer an administrator?

Mr Lockery—We administer very large superannuation funds but not the small end where you do tend to have this situation of an individual dealing with a fund. The funds which we typically administer would have teams of anywhere from five to 25 people administering them. It is much easier to create systems of checks and balances, separation of responsibilities and controls in an environment of a whole team of people dealing with a fund, which is what you get with a large fund as opposed to a situation of a very small fund.

Senator ALLISON—So is that a long answer to suggest you did not make any changes?

Mr Lockery—I guess what I am saying is that we have put extensive procedures in place in regard to the businesses that we are in. Those procedures were already in place at the time the fraud was detected. So have we changed those procedures as such? No. But the fraud could not have occurred in the way it did had those procedures been in place in regard to Mr Ogilvy's fund.

Senator ALLISON—And you do not have any other funds of that sort, any other small funds? That was the last one, was it?

Mr Lockery—Yes. We exited that business, so whether it was the last one or whether there were others which we then passed on to someone else—

Senator ALLISON—But did you exit those funds because of this problem?

Senator SHERRY—It did not exist so it could not be the last one. That is part of the problem.

Mr Lockery—From the client's point of view it existed. We exited that business as a business strategy long before the fraud was detected.

Senator ALLISON—Mrs Ogilvy-O'Donnell makes a number of suggestions, and I note in your submission you say there needs to be a balance between the problems that might affect the minority versus the assets of the majority. Have you had a chance to look at those recommendations and are there any of them that you could support?

Mr Lockery—It is hard off the top of my head because I do not have the recommendations in front of me.

Senator ALLISON—Perhaps you could just give us that on notice, then, if you are not ready to answer that question. Finally, the committee has heard a fair bit of at least anecdotal evidence about fraud which remains unreported. What is your experience in the industry and in your business, for instance? Have there been frauds which have gone unreported, been covered up?

Mr Lockery—Not that I am aware of.

Senator ALLISON—Would you be aware of it if it had been?

Mr Lockery—Not necessarily, I guess. I am not sure how one can ever be certain that one would be aware of a fraud if it had been covered up.

Senator ALLISON—If it is covered up by the directors. Are you a director?

Mr Lockery—No.

Senator ALLISON—Or are you a member of the board or whatever it is?

Mr Lockery—The firm operates in Australia as a branch of Towers Perrin, which is a worldwide company, so the directors—although we have one current director in Australia—are primarily in North America and Europe. So there is not a local board—

Senator ALLISON—So who would know about a white collar crime in your business if it was discovered and covered up?

Mr Lockery—Presumably our senior corporate counsel, who is also the company secretary, and the broader board. But as a firm we do not have either a reason or a philosophy which would lead to that result. I believe, if you take the example on board, as soon as we identified that there was a fraud for which our employee was responsible we acted quickly to address Mr Ogilvy's immediate financial circumstances and then the longer term issue. I guess the whole suggestion that we would cover one up is just totally inconsistent with the way we do business.

Senator ALLISON—Because you are in the industry you must have heard reports of this happening in high places, in banks and other places?

Mr Lockery—The honest answer is no. Perhaps I—

Senator ALLISON—Moving in the wrong circles?

Mr Lockery—Yes. I read various reports of actual discovered and reported frauds but the issue of frauds which have been covered up I have never become aware of.

Senator ALLISON—Would you say it ought to be an offence to cover up a fraud?

Mr Lockery—I think that is hard to describe because I am not quite sure what you mean there by 'cover up'. In my own mind I can see it ought to be an offence to try to get out of being responsible for a fraud. If you are saying it ought to be an offence—having compensated the victim for the fraud—to put your hand up and say, 'Hey, we committed fraud', then no, I do not think that is necessarily something that ought to occasion some sort of policy of public floggings for organisations that have employees or other parties commit fraud. I do not see what that actually achieves.

Senator ALLISON—No, that is not quite my question. It is about circumstances where there is not a victim as in a customer of an organisation—let us say it is a bank where there is some fraud, somebody makes off with \$10,000 and it is easier for the bank to simply sack the employee, get rid of him or her out of the system, and just go on with business as usual. My question is: what is your personal view about whether or not that is a legitimate action or whether there ought to be a legal impediment?

Mr Lockery—I can see amongst financial institutions that perhaps that ought to be an item which should be reported to the regulator as opposed to some sort of public report. If it is an isolated incident over which there is no reason to believe it is some sort of systemic problem, then I do not see what the issue is. A report to the regulator would have the effect that, if this was occurring every second week in a financial institution, the regulator would no doubt become concerned that this was a systemic problem within the organisation and therefore it would become something which the regulator, as part of its prudential regulation of the industry, would want to address.

Senator ALLISON—What if it became a habitual problem for the individual concerned who then went on to another bank or another firm and did the same thing?

Mr Lockery—The question of not so much the organisation but the individual is a very difficult area of policy. I think this is a question of to what extent a person should be labelled as guilty of any crime going forward, that forever more they will hang around their neck a sign that says, 'I robbed the local candy store.'

Senator ALLISON—Isn't it a question of them being brought to justice, of actually being charged? The question is whether or not they ought to be charged for a crime of fraud regardless of whoever is the victim. Isn't it reasonable that, just as you do not get away with not paying a parking fine, you should not get away with conducting fraud, that it ought to come to the court and you should be required to face the justice system?

Mr Lockery—Yes. I guess that first of all I was looking at it from an institutional point of view—

Senator ALLISON—That seems to me to be the problem.

Mr Lockery—and then, secondly, from the view of how the person is labelled, or identified, going forward. In terms of whether or not I think everyone who commits a crime ought to be subject to appropriate punishment or otherwise for that crime, then, yes, I agree completely.

Senator ALLISON—But no-one reports it, it gets covered up; it is not a crime, effectively.

Mr Lockery—Yes. There has to be a line drawn at some point. Perhaps it is above a certain amount. When you come down to crime, what crimes count? If somebody goes into a candy store and steals three bars of chocolate and the store owner catches him on the way out and says, 'Do it again and I'll call the police,' and lets the guy go, that to me seems reasonable. That is a long way from your position of saying that somebody has committed a fraud and ought to

be brought to justice. What I am saying is that I agree with that position, but there has to be some point of drawing a line between those two.

Senator ALLISON—You would not hazard a guess at a monetary amount?

Mr Lockery—No. I find monetary amounts very difficult. Perhaps it is in the nature of the crime; perhaps all fraud should be reported in that regard in the sense that it is fraud, as opposed to at what point you report a theft in terms of theft of goods from a store. I do not know the answer to that. I am merely a superannuation actuary.

Senator LIGHTFOOT—I have a couple of quick questions for Mr Lockery. Are you able to confirm, notwithstanding the confidential nature of your settlement, that full restitution has been achieved?

Mr Lockery—I do not believe I can comment on the settlement at all. I believe I can tell you that the Towers Perrin policy is always to make full restitution to its clients who are adversely affected. At the end of the day I suspect that one would say full restitution is in the eyes of the beholder.

Senator LIGHTFOOT—In a confidential letter from your managing director in Australia, Mr David Solomon, to the secretariat of this committee, Mr Solomon said, *inter alia*:

Towers Perrin is pleased that settlement for the full restitution has been achieved.

Why is it that Mr Solomon can say that but you cannot, Mr Lockery?

Mr Lockery—I would say that Mr Solomon is stating a matter which is a matter of opinion rather than a matter of fact and to the extent that it is a matter of opinion then I believe that is a reasonable statement.

Senator LIGHTFOOT—So it is not a matter of fact that full restitution is achieved?

CHAIR—We are not here to adjudicate those issues.

Senator LIGHTFOOT—I take the chairman's advice but I just point out that, whilst we are trying to establish certain facts for this committee, it is very difficult when we cannot get witnesses to answer things that are a matter of public record. Let me shift on. When do you consider that the responsibility of funds that come into your office or offices is yours unequivocally? I am not talking about electronic transfer. There is very little ambiguity there. But the ambiguity arises when funds are given by way of cheque or other securities to an employee of your company and a receipt is then issued. From that moment on, is it your responsibility with respect to those funds? I am trying to work out where the line is.

Mr Lockery—I would expect so. I do not directly work in the receipt of funds, but I would expect so.

Senator LIGHTFOOT—So there is no distinction then, given those very brief cursory guidelines that I have explained, between stealing as a servant and the later event of embezzlement?

Mr Lockery—I cannot identify any distinction.

Senator LIGHTFOOT—What were the specific charges with respect to your employee? Are you able to tell us that?

Mr Lockery—We could give you that information, I am sure, but I do not actually know. It would be a matter of public record.

Senator LIGHTFOOT—Yes; I have just learnt, Mr Lockery, that public record is something that you cannot often answer.

Mr Lockery—Sorry; I am just unaware.

Senator LIGHTFOOT—Do you understand the distinction between larceny as a servant or stealing as a servant and embezzlement?

Mr Lockery—Probably not.

CHAIR—I think you should take that on notice.

Mr Lockery—I am happy to have it explained to me.

Senator LIGHTFOOT—I have studied law for a brief period.

Senator SHERRY—That is how you are getting away with declaring you are not a lawyer, is it?

Senator LIGHTFOOT—I am not about to put my hand up and declare that.

Senator HOGG—Can I go back in the line here?

Senator LIGHTFOOT—But I understand that larceny as a servant is technically, in the old English terminology, before the funds come into the hands of the master, and embezzlement is after the date that they come into the hands of the master. That is why I was drawing the distinction as to when you actually acknowledge that they are your funds. If that is to apply, then that ought to apply right across the whole industry, and maybe it would resolve some of the problems. I am not sure, because of the confidentiality of the agreement, as to when that actually happened and whether part of the frustration that Mr Ogilvy or his heirs, particularly Mrs Fiona Ogilvy-O'Donnell, was as a distinction between those two particular categories of fraud. Fraud is a fairly nebulous sort of charge. I do not have any other questions.

CHAIR—Mr Lockery is an actuary, not a lawyer, so that is why he has difficulty answering.

Senator LIGHTFOOT—I would have thought an actuary could have answered some of those questions, Mr Chairman.

Senator SHERRY—Just returning to the theme of Senator Hogg's questions: Mr Lockery, do you accept that superannuation money is for retirement. There are two critical differences, I think, between superannuation and other financial products. One is that it is for retirement and it is compulsory for employees in this country now and, secondly, by the very nature of the money being for retirement, as Senator Hogg mentioned, you may not be able to accrue moneys if they are stolen. In this case, very sadly, the person concerned actually died before the case was settled—obviously the risks of that happening when you have retired are much greater. Given that there is \$500 billion in superannuation in this country, and growing, do you accept that legislators have to deal with the protection mechanisms in a significantly different way from say other financial products?

Mr Lockery—Yes, I think it is important to try and provide a tighter framework to the extent that that is possible. I think it is important from the point of view that it is more likely that less financially sophisticated people will be involved in the system. The average person in the street, so to speak, is not likely to go out and have \$200,000 to invest in shares or bonds or whatever else as their normal sort of dealings, but it is quite possible by the time they get to retirement that they will have that amount or more invested in a superannuation fund. So it does, in terms of financial assets—if I leave out things like people's houses and things like that—tend to be the largest single financial asset for working Australians. Because any financial system is very complicated and difficult for people to understand generally, you have to expect that it will be difficult for many people. So I think there is an obligation on the legislators to provide a reasonably tight framework for that, still balancing, as I said, at the end of the day, the problem of starting to tweak the system one step further may actually cost more than you ever save in the process.

Senator SHERRY—I understand that debate and how you draw the line in the balance, but I am sure you would have heard about the Maxwell fraud case in the UK—it is very infamous—and there was also a significant degree of mis-selling a product—some of which was fraud, some was not; but certainly some was fraud—but that undermines the public's regard and respect for and the credibility of the entire system and legislators have to react to that. It is preferable to make sure you have got the best safeguards in place before that happens rather than after.

You talked about less financially sophisticated persons in the street. What struck me about this case is that Mr Ogilvy was an accountant who did have reasonable financial knowledge by way of his background and particular occupation and education. How do you think the less financially sophisticated person in the street—to use your description—can handle having to make judgments about funds managers, long-term returns, where to invest money and how much to invest? Those things are fairly basic for all of us and for you who, every day and every night, is dreaming of them, I suspect, as an actuary. What chance has a very significant proportion of our population got of making informed decisions about these matters?

Mr Lockery—I think it is very difficult for the majority of the population. I would certainly hope that the majority of the population would never consider setting up their own one-man

superannuation funds. The protection for those people always would be to deal with reputable organisations and to make sure that in that way they have protection from that point of view.

In terms of making financial decisions about issues of what to invest in or not or whether to be mainly in shares or other things, those people do need to get financial advice, if that is what they are going to do. Organisations like ASIC do put out brochures and things to help individuals. For example, they do so to help individuals choose a good financial planner. That is one of the better brochures out there in the marketplace that warns you of the problems in choosing a financial planner and how to get one who will be able to help you and meet your needs and all those sort of things. It is a difficult area. I would love to see more financial education in our education system but that would take another 40 years, even if we had it today, to flow through the system.

Senator SHERRY—Along with everything else that we want from the education system

Mr Lockery—Yes, absolutely.

Senator SHERRY—We have eight million people in superannuation in Australia. Whatever the future holds, I am not sure of their level of responsibility in the decision making process. What is the sense in a system where eight million people have to go out and hire financial planners at significant cost to get all of this advice that we expect them to be able to handle. What is the sense in all of that?

Mr Lockery—The issue there is that it is the trustees' role in doing things like offering default portfolios to consider the sorts of arrangements which are likely to be suitable for the majority of people. Therefore, I can feel I am one of the great majority of people and that will probably be suitable for me. If I really want to do something else, I should get advice. Where I think people tend to go wrong in that is by going off and making those decisions. I could be in a large industry fund or whatever where there is a default portfolio that I am invested in and I decide to do something else without the education, training and experience or getting advice. I say to those people that that is a mistake. If you do not have the education, training, and experience, and you want to do something different, you need to get the advice. If you do not want to get the advice, and do not have the education, training and experience, do not make those sorts of decisions.

Senator SHERRY—Yes, but the brave new world of superannuation competition choice theory is that people have to go out and do this.

Mr Lockery—Everybody will have a default arrangement.

Senator SHERRY—But we do not know that yet, Mr Lockery.

Mr Lockery—Okay. I trust that everybody will have a default arrangement because I cannot believe that the parliament and the Senate will set up an arrangement which does not have any default arrangement in it for the protection of the great majority of people.

Senator SHERRY—Thank you.

CHAIR—Thank you very much, Mr Lockery. This issue of fraud, as you said, because of the quantum of money is important to the committee. Based on statements by you and others today, I think we will be calling Dr Graycar, a professor of criminology, to give us his assessment because I know he has a particular interest in superannuation. Thank you very much for appearing before the committee today.

Senator HOGG—Before we close, Mr Lockery, could I ask one follow-on question? What makes you believe that even if there is the existence of a default fund that the employees of a particular employer will not be coerced out of that default fund into another fund? In the real world, and I have been out there on the ground and I have watched people being coerced into particular funds, what is going to stop that?

Mr Lockery—That is the classic UK pensions mis-selling example; that people were effectively coerced or encouraged or persuaded to take up other arrangements which were quite inappropriate. I am not sure that there is anything that you can do about that beyond the criminal sanctions or the financial penalties against the people who undertake that—those people who do not abide by the rules that say where you are advising people to do things you have a responsibility to know your client and to act in the best interests of the client.

That can already happen in many areas. There are many areas where people already have a choice. Certainly, new employees in the New South Wales public sector since they created First State Super in New South Wales have the right to take their money out of the state super and choose to go into any other fund they like, and undoubtedly many of them are approached by ‘financial advisers’—

Senator HOGG—The Dodgy Brothers they call them.

Mr Lockery—to do that. I am not sure there is any way at the end of the day you can avoid that other than to have penalties against it. That is not a case of fraud where somebody is running off with the money. What is happening in that case is the adviser looking to get a commission or whatever for having moved that money. That commission, unlike a fraud situation, is not going to be nearly as big, and therefore the penalties for acting in that way can be much more threatening.

Senator SHERRY—It is almost worse. It is not illegal, so what can you do about it?

Senator HOGG—Yes, and how do you prove it?

Mr Lockery—It is illegal to give advice without knowing your client.

Senator SHERRY—Yes, but proving in a court of law that you failed to act in your client’s best interests, even though you got a commission, is extraordinarily difficult. How do you prove that? It is extraordinarily difficult in reality to do that.

Mr Lockery—I accept that is a problem.

Senator SHERRY—We will be debating this again at another time.

CHAIR—Mr Lockery, you might help the committee by giving us Towers Perrin's view on giving advice and giving information because the giving of advice now requires a broker's licence, and employers are finding themselves in a bit of a no-man's land here. I think I would like you to take that on notice.

Mr Lockery—Okay.

CHAIR—Thank you very much.

Proceedings suspended from 3.03 p.m. to 3.14 p.m.

PRAGNELL, Mr Bradley John, Superannuation Policy Adviser, CPA Australia

CHAIR—Welcome. Perhaps you could speak to your submission.

Mr Pragnell—Thank you very much, Mr Chairman. CPA Australia is Australia's largest accounting body with members in business, finance and accountancy fields with over 90,000 members. Our members are heavily involved in areas such as auditing and accounting services to superannuation funds. As well, many of our members in public practice would provide advisory services to clients on areas such as the establishment of self-managed superannuation funds.

In speaking to items A and C of our submission I would, firstly, like to note that we broadly support the pushing ahead of the Wallis reforms in regard to the creation of a two-tiered system in terms of consumer protection and prudential regulation. One item that we did not canvass in our submission, but which I am happy to discuss with the committee, is the role of the auditor. One thing that is important in providing some degree of protection to fund members is the role of the auditor in ensuring that the fund is managed in a proper and prudential manner.

CHAIR—Could you please go ahead with that now?

Mr Pragnell—The institute spoke somewhat on this matter, I suspect. CPA Australia would see the role of the auditor as being very critical in ensuring protection for members. The annual review of the fund, both in the auditing of the accounts and the auditing of the fund in terms of meeting its statutory obligations, is a very important part of the regulatory structure that would ensure that the fund trustees are managing the fund in such a way that they meet their obligations under the SIS Act. As well, the auditor is obliged to inform the trustees of any shortcomings in the financial or other management of the fund, and if the trustee does not choose to rectify this situation, then the auditor is obliged to notify APRA. It is then up to APRA to take appropriate action.

CPA Australia and the other main accountancy bodies do work very closely with APRA. We are always conscious of trying to raise the standard of auditing out there. We do coordinate training and education for our members and we do try to work very closely with APRA in this fashion. As well, we also try to work with APRA when dealing with disciplining our members who may have defaulted in their role as auditor. CPA Australia, as with the other main accountancy bodies, has the power to discipline its members who default in their responsibilities as auditor including the levying of fines and disbarment from our organisation, which is a requirement if they wish to continue to perform as an auditor. We have consciously and continuously tried to work with APRA to raise the standard of auditing because we do feel that this is a very important aspect of ensuring against fraud, misappropriation, and the prudential management of the fund.

CHAIR—Are you suggesting that it is not good enough at the moment?

Mr Pragnell—The view of CPA Australia would be that it can always get better.

CHAIR—Does it require a more prescriptive approach by way of legislation or regulation?

Mr Pragnell—I would not say that. I think we are generally trying with APRA to ensure that when our members perform an audit they have the skill and competency at a basic level to perform the audit. But we are always trying to educate our members over and above that. We feel that, yes, we do want to establish a floor in terms of the fact that to do an audit of a non self-managed superannuation fund you must be a registered company auditor. You must be a member of one of the main professional associations—that is a basic minimum standard. But at the same time there is always scope for the professional associations working with a regulator to try to raise those standards. I would say our experience has been that there probably would be less need for increased legislative prescription in this area but it would always be good for the regulator and the professional body to try to work together as much as possible to try to ensure that our members are operating at such a standard that the regulator feels confident that members' interests are being protected.

That is where we stand in terms of the role of the auditor. We would hope that this function would continue and that the auditor would continue to play a very important role in the sense of providing external third party supervision of the activities of the trustee to ensure that the trustee is doing what it is obliged by statute to do. We would hope that this would not be eroded in any ongoing reforms. It is an unsexy part of the superannuation system; nonetheless, it is an important function.

CHAIR—How many cases of fraud have auditors detected in Australia? It seems to us that it has been detected by internal and/or other mechanisms rather than by auditors.

Mr Pragnell—The auditor provides an annual review and I would hope that a fund is structured in such a way that it has certain fraud prevention mechanisms and processes operating on an ongoing basis so that the auditor should not necessarily have to pick that up. In a sense, the auditor is the building inspector who comes in on an annual basis to ensure that the foundation is sound and that the ceiling is not collapsing on the fund. This does not abrogate the trustees of their responsibility to ensure that the fund is properly managed and that there are systems in place to prevent fraud.

Senator HOGG—I hate to destroy your analogy with the building inspector—

Mr Pragnell—It is probably a bad one, I am sorry.

Senator HOGG—It is a bad one because I have heard stories, from time to time, that they get around the building inspector by leaving \$2 under a brick.

Mr Pragnell—Yes, that is a bad example. I was not thinking about it in terms of its reality.

Senator HOGG—I am being serious because it is very important. Just how much do the auditors gloss over and take for granted the information they are being presented with? How much are auditors taking for granted?

Mr Pragnell—I do not know if it is much, but there is a problem that CPA and the other main accountancy bodies have identified and it has always been at the heart of the auditing process. It probably comes down to the bias built in from the fact that the person you are auditing is the person who is paying your fees. That bias is something our body, and the other main accountancy body as well, tries to address as much as we can through our education and disciplinary procedures. However, we do recognise that this is an issue that needs to be addressed. We cannot just say that our members have the basic competencies and are members of a professional association; therefore, we can expect them to be fair and unbiased. We do have to recognise that there are certain commercial realities and, therefore, we have to put extra pressure on our members in our supervision and disciplining of them to ensure that this does not bias their audit. If you do a negative audit of a fund or of any client, they may not come back to you the next time. That is something that has been recognised in the research that has been done in this area. We have always tried in our education and professional standards to stop this from influencing how the audit is performed.

Senator HOGG—This is a growing area in terms of the amount of money that is available to the various funds. It was put to us today that fraud will occur in super funds over time and no matter what amount of systems one puts in place to try to prevent these things it is still going to occur. Therefore, the role and the function of the auditor under those circumstances is absolutely paramount because therein lies the only safeguard for many people with their money invested in a superannuation fund.

Mr Pragnell—I agree. In many instances the auditor is going to be the only external eyes being able to look openly at the records and processes of that fund on a regular basis. It is difficult for the regulators to get out there. Quite often when the regulators do site inspections they do not have the time or the resources to necessarily go into the depth of detail that may be required. In some ways, they are reliant upon the auditor to act, to a certain degree, as their eyes and ears. The auditor does perform a very important regulatory role and we would never want to see the role of the auditor downgraded. We would always want to see the role of the auditor maintained and we will always like to see the regulator working with a professional body to try to raise the standards as much as possible.

Senator HOGG—Do you see a role for the regulator, therefore, in some sense to do spot checks to ensure that the auditor is, in effect, carrying out the duties that they should be carrying out? Or is that going to the stage of overkill?

Mr Pragnell—I would have to consider to what degree the regulator does—

Senator HOGG—We have been told today that superannuation is, in effect, too complex. We need to simplify it; there is too much dotting the i's and crossing the t's. I am not saying to deregulate to the point where you do what you like. But is there a cost-benefit analysis at a point where, because of the amount of regulation, it makes it uneconomical for some funds, in effect, to exist?

Mr Pragnell—Yes. I would definitely agree with that. My understanding of it was that when the SIS Act was developed it was very much based on the notion of principle based regulation and it was not to be prescriptive. It was very much about setting down a series of principles by

which the responsible entity, that is the trustee, was to abide in their dealings. If the trustee was not abiding by those responsibilities then it would be up to the auditor in the first instance, and then the regulator in the second instance, to try to address those shortcomings in terms of that practice.

I would think that the notion that was operating at that time insisted that principle based, as opposed to prescriptive, legislation was probably sound. Once you get into prescription, the diversity in the superannuation industry makes it very difficult to prescribe. Quite often, prescription can be a very onerous burden on smaller funds, particularly for small corporate schemes, where it is easily dealt with by larger funds. I would think that they would come under increasing pressure and you would see more and more of them getting folded into master trusts and so on. That is the number one reason why you hear about employers winding up their small corporate schemes. It is primarily on the basis that it is too costly. It is not core business. It is something that we would just as soon outsource to large financial institutions. That is something we have to be very wary of because, as we add on layers of prescription, I think we are shaping the nature of the marketplace. The more prescriptive then the harsher the legislation comes and the more you are going to end up with a smaller and smaller field of large players.

Senator HOGG—You spoke about disciplining members. How many members would you discipline in a year, and how many of those would be for superannuation related issues?

Mr Pragnell—I am happy to take that on notice and provide you with specific numbers, but I know that—

Senator HOGG—How many members has your organisation got?

Mr Pragnell—It has 90,000 members. As to how many we would discipline, I could not give you—and, please, this is not—

Senator HOGG—No, take it on notice. Would you give us some idea of how many you discipline each year, how many of those are for superannuation related issues, how many of those are disciplined for other issues and what those issues would be.

Mr Pragnell—I would be very happy to get that data. It would be very useful for me too.

Senator HOGG—Also, if any of the discipline is in respect of fraud, how many of those are disciplined for straight-out fraud?

Mr Pragnell—Right.

Senator LIGHTFOOT—Mr Pragnell, do you foresee any problems with the global village concept that encompasses superannuation—in other words, transfer of funds beyond the sight of the government, electronic transfer of funds, et cetera? Do you see anything that the government ought to seriously consider with respect to, say, some regulation in that area?

Mr Pragnell—In terms of the superannuation moneys being invested overseas or in terms of offshore funds?

Senator LIGHTFOOT—My questioning is precipitated by funds that are transferred offshore, that are outside the control of regulations of the Australian government. I am sure it is going on now.

Mr Pragnell—I am sure it is too, and I would think that, if we are dealing with compulsory superannuation contributions, we would have some serious concerns if those contributions were being made to funds outside of Australia. Obviously, the way SIS is designed in the superannuation guarantee, they have to be resident complying superannuation funds. But, if there were arrangements where they were being made to non-resident, non-complying funds, then that is an issue that I know the ATO has been looking at previously in terms of the New Zealand funds. There were some rather unfortunate arrangements where people were seeking to exploit loopholes in the income tax assessment acts, where they were seeking to get their deductions and to meet their SG obligations, to invest them into funds in New Zealand and then round robin the money back into Australia. That kind of arrangement is the type of arrangement that needs to be stopped, obviously.

However, if people are making contributions, investing money over the Internet, for instance, it is something which I would say would be very, very difficult to regulate. If you have a modem, an Internet service provider and a credit card, you can basically go overseas very quickly and make these sorts of investments. I would think it would be very difficult for the Australian government on its own to seek to regulate those sorts of offshore investments.

Senator LIGHTFOOT—For the purpose, though, of this particular discussion—of the evidence we want to take here—we are just talking about superannuation funds. Are the fiduciary responsibilities that fund managers have sufficiently strong enough to prevent money going offshore where it is outside the regulatory and legislative control of the federal government?

Mr Pragnell—I would not view that as necessarily being something which needs to be addressed by legislative reform. Something like 16 per cent of our superannuation assets are invested offshore. Offshore investing is a necessary component of maintaining a diversified portfolio.

Senator LIGHTFOOT—I am sorry to interrupt you and I hope that does not break your train of thought, but when you say ‘diversified portfolio’, is it not emerging that where we already have \$500 billion in funds already, in less than 20 years time we will have \$1,000 billion? Is it not true that we are going to find it difficult to find homes for that sort of money within Australia’s legislative boundaries? Should we not be prepared now to anticipate that happening? The mining industry has over 50 per cent of its exploration now being spent offshore; I can see a parallel with respect to superannuation funds going offshore in large amounts too, but they are going outside the control of the federal government. Should we be readdressing that now? If we should, what steps should we take?

Mr Pragnell—I am trying to think through what would be the problems with fund managers making investments of superannuation moneys offshore. Are we concerned about the money being lost, or fraud prevention? Are these the sorts of issues you are concerned about? For instance, say the XYZ fund hires fund manager Y, fund manager Y invests the superannuation

money in an emerging economy, something terrible happens, the economy goes belly-up and that retirement income of those Australians is then lost. Is that the kind of issue you are concerned about?

Senator LIGHTFOOT—Even worse than that. For instance there is a recent case in Australia where a solicitor took \$30 million of trust account funds offshore, he was murdered in Thailand, but the \$30 million was never recovered. That is the sort of thing that I am talking about. It may not be done with a satchel in the middle of the night on a Third World country airline, but openly and honestly taken offshore. It could be a big ticket item. It goes offshore with the imprimatur of the government and it is never returned for one reason or another.

Mr Pragnell—How could the Australian government regulate that? We would want to see it done through various multilateral arrangements. That is very important. The MAI was looking at trying to address some of those arrangements in terms of investments being made offshore and trying to deal with these cross-border problems. I have not devoted much of my thinking to how the Australian government could address those sorts of investments, but I would have to agree that, as the superannuation coffers swell and more money does move offshore, it is something we are going to have to address in the future—maybe legislatively, maybe through the role of the regulator, maybe through the role of the auditor. That may be necessary.

Senator LIGHTFOOT—To extend that beyond the periphery of what we are talking about, what sort of investments could Australian superannuates expect to get overseas from an ultra-responsible, internationally respected organisation that you know is not going to rot the money if it goes offshore? Could we expect better and safer returns on overseas investment, given that there is a rule of thumb that the higher the interest the higher the risk?

Mr Pragnell—Generally the view is that international shares would generally carry with them a greater degree of risk but also a potentially better return. The issue that needs to be kept in mind is that I believe the Australian share market constitutes approximately one per cent of the world's share market and, if you look at your share portfolio, by investing only in Australian shares you are not necessarily diversifying your portfolio enough. A well-balanced portfolio would probably need to include some degree of international shares. In terms of the types of investments that are made, from the annual reports and fund manager reports that I have seen, generally they are in pretty respectable blue-chip stocks from the United States or Europe. I think that generally superannuation fund trustees would be more hesitant to go into emerging markets. If they were looking at diversifying into international shares, they would probably be looking at the more established traditional markets.

Senator LIGHTFOOT—You would go in through, perhaps, Credit Suisse.

Mr Pragnell—Yes, exactly. And you would go into, say, either the European, American or Canadian markets to try to spread, to diversify, and to try to ensure that your long-term returns are generally beneficial. We have had the benefits in Australia that we have never had a cap on overseas investments that have existed in some other countries. For instance, in Canada, where I am from originally, pension funds were restricted to holding only 10 per cent of their investments in overseas investments. This was causing some problems and was starting, according to some research, to have some impact on the returns. It is important, obviously, for

superannuation funds to be invested productively in Australia to help produce jobs and investment and economic vitality. But, at the same time, we would not want to restrict that to such a degree where we are in a sense taking away from good retirement returns for Australians. So obviously there is a bit of a balancing act there.

Senator LIGHTFOOT—It looks like then—and this is not an answer; I'm asking you for an answer—that the global village concept is becoming a reality because the investment will follow where the best/safest returns are and that means that other types of contact and intercourse will follow. Is that your opinion?

Mr Pragnell—I would definitely agree with you on that. I believe the figure is about 16 per cent of superannuation fund assets are held in international shares. That figure has been increasing steadily over the past 10 years. I think that we will increasingly see more and more offshore exposure for superannuation funds, and obviously that does raise issues for the government and for regulators in terms of how they seek to address that.

Senator LIGHTFOOT—I think it is great to have English as a first language, Mr Pragnell.

Senator SHERRY—Following on from this issue—it is a macro-economic issue and really we are concerned here with some of the micro issues, importantly—Australia is a net capital importer, and whilst Australia is a net capital importer you would expect that the vast majority of superannuation moneys will remain in Australia, other than for reasons of diversification of portfolio— maybe higher returns commensurate with risk. What I find interesting is the figure you mention of 16 per cent; 12 to 15 years ago it was 14 per cent. There has not been a huge shift.

Mr Pragnell—There has not been a huge shift. It has been modest but it has been very—

Senator SHERRY—John tells me it is now closer to 20.

Senator LIGHTFOOT—But in dollar terms, of course, it is vast.

Senator SHERRY—Yes, that is right. But the other interesting thing is that superannuation has grown significantly but total private savings have declined.

Mr Pragnell—But that is probably due to a variety of other reasons.

Senator SHERRY—I am not suggesting that private savings have declined because of superannuation. There has obviously been a shift in the mix of saving but there is a whole lot of other complex economic and social issues. But to come back to the micro issues, on the superannuation guarantee you recommend changes to the definitions of superannuation guarantee payments. I just want to find out what you mean there. I will mention a couple of examples: SG does not include overtime; it does not include a variety of 'payments' that are not wages but are included in the definition of income for the purposes of tax and, interestingly, for the purposes of the superannuation surcharge, so called. Are you advocating the same definition for the purposes of income tax to apply the SG to?

Mr Pragnell—We did not address that in our submission.

Senator SHERRY—You alluded to it though.

Mr Pragnell—We alluded to it, and in terms of the principle I would say that we would seriously consider supporting such a measure. We focused more in terms of the definition of who was eligible to receive SG payments—

Senator SHERRY—I was going to come to that point.

Mr Pragnell—We would hope that any definition of SG meshes in a simpler and in a more equitable fashion with existing definitions in tax law, social security, and so forth. That is very important.

Senator SHERRY—I agree with you. It would be simpler, and I think much better and fairer, to apply the same definitions—

Mr Pragnell—Yes.

Senator SHERRY—but there is a cost issue there.

Mr Pragnell—Of course there is a cost and that would have to be weighed up—definitely.

Senator SHERRY—You have suggested removing the exemption for those earning under \$450 a month and under the age of 18. I do not disagree with that but, again, how do you suggest dealing with the practical problem of the level of superannuation contribution—albeit it has gone up to seven, going to eight, and going to nine—matched against the administrative cost?

Mr Pragnell—I think that the reason we were recommending the reconsideration of these definitions was more on the basis that, yes, they are going to be contributing very small amounts and, yes, there will be a cost on employers but, firstly, very small amounts can grow into more significant amounts with the power of compound interest. As well, if people are earning money from a variety of part-time or casual jobs they can also be conglomerated in a much more significant superannuation amount and, importantly, especially when we are looking at young people, it is as much about raising awareness about superannuation as anything else. It would probably on those bases. We would think that there should be some reconsideration of the current carve-outs. The existing carve-outs do, in and of themselves, present as much of an administrative problem for employers as actually making the payments.

I am sure you have heard of the example of the major fast food chain—which shall remain nameless but is well known to my five-year-old son unfortunately—that actually does pay the SG equivalent to all of its employees regardless of their age, whether they are part-timers or whether they earn less than \$450 a month, on the basis that it was administratively easier and easier for their payroll systems to actually deal with a simple percentage that they applied across the board than having to flag the payroll accounts of individual employees to say, ‘He has turned 18. She has turned 18.’ It just gets very difficult, I think, for certain players.

Senator SHERRY—I understand that, but the issue I am getting at is that the money is in the fund: what is the cost to the fund of administering it if charges range from \$1 upwards per week—and that does not include any take-out for insurance—and you are looking at \$4 or \$5 a month? That would be a significant slice of any contributions. You have got \$20 a month going in, which is around \$400 to \$420 earnings per month. You take out a third for tax and then you take out \$4 or \$5 for administration. I am not against the concept but it is a fairly costly way of educating people about the worth of superannuation to have an account with nothing in it. You would think it is reasonable to deal with the matter in two ways: either you could have a minimum contribution regardless of wages or salaries earned and regardless of hours worked, et cetera, and/or you could have a requirement such as we have at the moment that a fund is required to preserve the initial contribution plus any interest that is accrued without the initial contribution being eroded by the administration component.

Mr Pragnell—Yes. I would think that those initiatives would deal with the minuscule amount problem that you are talking about—the \$5, \$10 or \$15 a month—that could go in an SG. I would think, though we have not canvassed this with member committees and so forth, that some sort of minimum contribution—a very simple floor—does provide a certain degree of administrative simplicity for dealing with what could be very small amounts. I do not know whether you would actually set that out, but you could prevent very small amounts from trickling in. I agree that, probably, as payrolls get automated as employers are forced to deal with the new tax system and to computerise certain operations to deal with pay-as-you-go, quarterly lodgments of their business activity statements and so on, the overall computerisation and standardisation would make it increasingly easier for smaller employers to deal with a larger number of employees having to receive superannuation guarantee. There could be a bit of a knock-on effect there and there could be some benefits there.

I would agree with you that we were looking at it more from the employer's and employee's position than necessarily from the fund's position. I think it would be up to groups such as ASFA and so forth to raise possible solutions along these lines to deal with very small amounts coming in.

Senator SHERRY—You have also referred to the voucher system and I share your concerns about the system and the way it is operating. Rather than the ATO issuing vouchers, firstly, if you improve the frequency of payment—even if it is only quarterly—you will have less of a problem and, secondly, the money, if it is paid to the ATO, could then be redirected by the ATO to the fund direct or to the last fund the employee was in, which they would know. Wouldn't that be better?

Mr Pragnell—We would generally endorse that kind of action. I think we do mention in our submission that we believe that the commissioner should be given greater discretionary power to ensure that moneys are invested in a superannuation vehicle, whether that is the last known employer, the last fund that the person belonged to, or possibly an ERF. We do not come up with a specific solution. That would be one way to better ensure that the money is reunited with the person it should be with.

The voucher system obviously does have certain problems with it but, given the constitutional basis on which the SG is founded and the fact that it is administered by the ATO,

I think it is a system which could be improved to ensure that there is still some flexibility. One of the problems that was identified in the National Audit Office report was that 50 per cent of voucher recipients did not know what to do with it. Obviously there needs to be something. I am not necessarily saying an expensive public education campaign. But, rather than someone just getting an envelope in the mail saying superannuation voucher, there should be a bit more information provided. I would hope that the ATO would try to assist people who do receive vouchers a bit more. I know they try hard but obviously they have a lot of things on their plate at the moment.

Senator SHERRY—I would not suggest they should have anything more on their plate than they have at the present time. On the issue of the employer reporting to employees, other than the employer recording, say, on the wage salary information to the employee—and I think a lot do this anyway—the superannuation contribution, I just cannot see the significant value in that.

Mr Pragnell—I know many employers do do it.

Senator HOGG—It is an award provision.

Mr Pragnell—Yes, it is quite often in awards; that is correct. We would hope that as many employees as possible have the amount of the contribution and the name of the fund. I think it is really important for them to be able to track that. If they are not receiving that information on their pay slip, then it is very difficult for them to know how much super is being contributed and where it is going.

Senator SHERRY—Unless they get the statement from the fund. They all get the statement from the fund; it is a requirement by law—six monthly or yearly.

Mr Pragnell—But they get that on an annual basis, whereas—

Senator SHERRY—Some are six monthly.

Mr Pragnell—But with the pay slip, it is something that they are getting on a regular basis all the time.

Senator HOGG—Where it is important is with the casual employee, who has variable hours, rather than a fairly fixed number of hours. They can see the contribution changing each time they receive their pay slip.

Mr Pragnell—Yes. That would be important information for the employee. Part of the problem—and I notice that this was raised in many of the other submissions—is that the SG is constructed on the basis that the ATO tries to ensure that employers basically do the right thing, but employees in a sense are really outside of the loop. There are very few rights afforded to the employee, very little information afforded to the employee. In a sense, they are outside of the loop. It is about the ATO making sure that the employer pays to a fund, and that is basically the communication channel. The employee should be in that loop much more than they are.

Senator SHERRY—I understand that argument. The difficulty is—and I questioned the tax office about this at the estimates—that, where an employee reports to the tax office the failure of the employer to pay superannuation guarantee, the tax office cannot tell them, the complainant, the employee, what is happening, when the moneys will be paid and what the scheme of arrangement is, if there is one, because of the secrecy provision.

Mr Pragnell—Exactly.

Senator SHERRY—Do you have any comment to make about that?

Mr Pragnell—I would not want to comment on that specifically, but I would think that any initiative that tries to provide more information to the employees to make them more fully aware of what the employer is doing, or what the employer has not done, can only be good for the system. The employees should play more of a monitoring role than they currently do. In a sense, the way the system was set up becomes increasingly important, given the direction of workplace relations reform where you are moving towards individual agreements, where you have governments that are trying, I would say, to quarantine the ability of trade unions to supervise employers. So it is more and more important that, if we do not address those powers elsewhere in workplace relations legislation, we do have to provide some additional, in a sense, supervisory powers to individuals. I think that when the SG was set up—and even in discussions with tax office people a few years ago—they spoke very strongly about the supervisory role played by trade unions and about requirements and awards to provide information, to provide quarterly or monthly contributions, and they viewed that as being an intrinsic part of the SG. If super ever got removed as an allowable matter, you are knocking out a very important leg of how the SG was constructed. So you either try to maintain that or you have to incorporate that somewhere else.

Senator SHERRY—For example, award provisions are an important supplement, effectively, to SG.

Mr Pragnell—Critical.

Senator SHERRY—For example, in terms of regularity of payments and some additional enforcement procedures—those sorts of things. On the secrecy provision, I understand why we have secrecy provisions on general tax matters, but I cannot understand it in this area, because in the reports and complaints I get there is significant frustration that employees who have reported cannot get information back about when the money will be paid if, indeed, it is going to be paid at all. It just seems to me to be a fairly absurd situation.

Mr Pragnell—In terms of there being some legislative redress, this would appear to be one which would be a rather sensible one to do to ensure that employees did receive the information that they needed to know because it will ultimately be their money. You are right, it seems absurd that they are prevented from getting this information from the ATO.

Senator ALLISON—Can I pursue the frequency of payments question. You are still suggesting quarterly. What are the problems with going to monthly payments across the board?

Assuming we can do as you suggest and remove that exemption for small income earners and under 18-year-olds, are there any other impediments?

Mr Pragnell—I would say that going from annual to monthly for some employers might be viewed as going too far too fast. There could be some strong opposition from certain quarters of the small business community about moving to monthly payments. I suspect that there would be some small businesses that would complain quite fiercely about the problems of having to remit the superannuation on a monthly basis.

In terms of the quarterly, the superannuation guarantee is an odd beast because you are determining your minimum eligibility on a monthly basis, you are determining your maximum eligibility on a quarterly basis, and you are actually making the contribution on an annual basis. It seems to me to be not a very sensible way of trying to structure something such as this. I would think that bringing everything together on a quarterly basis would probably make more administrative sense, particularly as we see so much of the reporting for tax, for instance, for small businesses, moving to a minimum of a quarterly basis. I would think that you would want to at least consider quarterly in the first instance if our concern is about the administrative burden on small employers before we actually move to a monthly.

Senator ALLISON—In terms of picking up non-compliance by making payments more frequently, would we gather the vast majority of them by going to quarterly, or would we deal with 50 per cent of the problem?

Mr Pragnell—In terms of dealing with employer non-compliance, I would say that moving to a quarterly basis would probably capture a significant amount of the non-compliance. When a business, for instance, goes bankrupt in the course of that 12-month period, the quarterly instalments at least would ensure that some superannuation contributions have hopefully been made along the way.

I would say that in terms of non-compliance—and I do not have the figures with me—you would have some employers either wilfully or through ignorance not making the contributions on an annual basis. But there is also another component where you have small businesses that effectively go into liquidation during a 12-month period: if they do that before 28 July for the previous financial year, then no superannuation contributions have been made and that money has been lost. At least with quarterly instalments we would ensure that some of the money along the way has been captured.

So there is the wilfully or the ignorant non-compliance, and also the problem of small businesses going bankrupt and people not receiving their entitlements along the way. We have to consider both of those.

Senator ALLISON—In terms of notification to employees about payments made or not paid as the case may be, what sort of mechanism do you see? Is it pay slips, or is that a separate requirement that can be in any sort of form?

Mr Pragnell—Probably through pay slips. That is in state based workplace relations legislation which means there are problems there obviously in terms of ensuring that all the

states do it on more or less a similar basis as well. The other area where the reporting requirements lie is in awards. We have the reporting requirements in two very disparate places that do not necessarily link up with the superannuation guarantee. We would not want to see an additional reporting requirement put on employers that flows directly from the SG that was supervised by the ATO. I think we would rather see the superannuation reporting built upon existing structures such as minimum requirements for pay slip information and state based industrial relations legislation and so forth, rather than another regulator telling you what you have to tell your employees. I think that would probably be a way in which small business would be more happy dealing with that situation.

Senator ALLISON—I have a question on one other area. You say in terms of opportunities and advantages that Australia might have for being a global financial centre—that other term of reference—that Australia has a highly educated and sophisticated work force. This morning a couple of witnesses suggested that there are some big gaps opening up, if not already with us, in terms of skills in this whole field of superannuation and financial services. Can you comment on that from your point of view? It was suggested this morning that we do not have enough accountants and, in the present circumstances with tax reform permitting, we still have a difficult situation.

Mr Pragnell—It is very difficult. CPA Australia, for instance, has its own CPA program and we have several thousand students, generally, who have done an undergraduate degree in accountancy or finance. Then they would do their CPA program as a professional year, usually the fourth year after a three-year degree. We view the education that we provide as being an important part of the overall education of the Australian financial services work force. We do have a separate superannuation and financial planning unit that we do offer. And we have about 2,000 enrolments a year in that. If there is a shortcoming, I do not know whether there is necessarily a lack of accountants—and I could not comment on that. I think we need to keep in mind that we now work in a very global competitive work force and that quite often there is a bit of a brain drain going on where our best and brightest go offshore.

That is something that obviously we have to think about in terms of our educational policies. We also have to think about it in terms of employers: what kinds of employers we have and how they actually seek to hold and maintain knowledge within Australia. We also have to think about how to bring the best and brightest here. It is very important to build up that intellectual capital in Australia in this industry.

By way of a personal opinion rather than the opinion of CPA Australia, in terms of becoming a centre for global finance, we have to be more than just an aircraft carrier for large American financial service providers to provide services into Asia. That somehow feeds into building up the intellectual capital within Australia. It is not just about retail products getting sold to Australians or it is not just that this is a convenient base to sell products into Asia. We actually need to keep the expertise here and build that up with people in the legal, accountancy, auditing and actuarial professions. That is critical to maintaining our position.

Senator ALLISON—Do you have a view about our education system in providing those skills, even going back to primary and secondary schools?

Mr Pragnell—I have personal opinions, but I would not want to bore the committee with them. I really could not comment.

Senator ALLISON—It is interesting that so far nobody has given us any strong comments in this field. The banking, finance and superannuation sector has a great deal to lose from not having an adequately prepared group of new entrants into university doing mathematics and accounting based courses. I am surprised that there is such little formal interest in the field. We get admissions of your personal attitudes but none representing your organisation.

Mr Pragnell—There is no hard evidence.

Senator ALLISON—You say, as many do, that we have a great resource linguistically—we have a couple of million people who have a language other than English as their first language. What is your view about our success in tapping into those other languages? This might be your personal view rather than CPA's.

Mr Pragnell—If there was a view, it would be a personal view. It is something that we need to work on much more than we do—and that is a personal view. It is a resource to be fostered and developed rather than something to be quarantined and sequestered away. For instance, look at the membership of our organisation. A lot of our students who come through the CPA program are from East Asia and, obviously, have another language. We think it is important for them and for our members in Australia for them to build up business ties and personal ties when they come here for their studies and when they return to their country. That is a very positive role that CPA Australia can play in its program. In terms of the second language of many Australians, I hope it is a resource we will try to develop further rather than something that we do not recognise and support.

Senator ALLISON—We see non-English-speaking children and adults as being at a disadvantage rather than as bringing some advantage with them.

CHAIR—Thank you very much, Mr Pragnell. Unfortunately, we have not covered any of our terms of reference B. Because of time constraints we will have to ask you to take those questions on notice.

Mr Pragnell—Thank you.

[4.16 p.m.]

BEATON, Mr Oliver Alan, President, South Australian Division, and National Councillor, Association of Independent Retirees Inc.

CHAIR—Welcome, and thank you for coming across from Adelaide. You have given us a supplementary submission which has some interesting issues. If it is the wish of the committee we will incorporate it in *Hansard* because questions of valuation et cetera are quite topical. Also, for the public record we will formally receive the original submission.

Is it the wish of the committee that the supplementary submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The supplementary submission read as follows—

CHAIR—Mr Beaton, would you like to talk to your submission and the issues?

Mr Beaton—Thank you, Senator. You have a change of dialects from North America to the Western Highlands so, with deference to *Hansard*, I will repeat anything you do not understand. I am appearing here as the South Australian Division President of the Association of Independent Retirees Incorporated and as a national councillor of that organisation. The organisation has charged me with the responsibility of policy development in the area of protective investment funds, et cetera, and that has come about as a result of my personal involvement in up to three of the most severe or serious cases of fraud of the elderly, in particular, in South Australia.

I would like to address this paper I have submitted. As you will recall, I originally submitted a position paper which set out the position that AIR takes in this matter, and the significance of that paper was the final page which contained a number of short recommendations, so I would like these conjoined. One thing I would like to say in reference to the paper is that one hears platitudes from responsible people in finance and ASIC and even at political levels that an investor should take more care in the selection of investment and of those they choose as financial advisers. In all of that there is a presumption and a smugness, I would suggest, that the defrauded people have been guilty of some misdemeanour, some sin of commission or omission. That assumption has little regard for the increased deliberateness and sophistication of white-collar financial crime and of the obvious inability of people involved in that to detect wrongdoing until it is too late to do much about it. I can in deference to this committee give you full details of these things and perhaps that may come out in questioning.

In South Australia in particular, but also in other states, to my knowledge—I have investigated Queensland and Western Australia and we have people in those states doing a similar job to mine—the incidence of overvaluation of mortgage property is clearly on record. The well-reported Growden case and the RetireInvest matter, which you will have knowledge of, are prime examples of collusion to defraud where investments have been encouraged, there have been false valuations and in some cases—in one of those I mentioned—entire portfolios have been sold up on the open market. People have been deprived of their total portfolio value and it was only an act of God that some of that was restored. I can go into detail on that.

With respect to the Growden case, which is a peculiar case, up until 1995 the state government of South Australia had a liability fund contributed to by practitioners in the industry. They were petitioned in 1995 to hand that fund over to the investment institute—and I will give you the detail of that in a moment—and they did so. But they did so with no protection and they did so with no codicils whatsoever on that. The sum of \$15 million of public money was handed over to be administered by the industry but within a short time it had disappeared so that when the Growden case came along there was no fall back situation. The government has subsequently refused liability and has declined to make any *ex gratia* payments to victims in circumstances I would suggest where there is a moral obligation at least, if not a legal one. That is still before the courts. It is a High Court matter that is being pursued.

The indemnity insurance underwriters that might have given some assistance refused to meet the claims on the basis of non-disclosure by the insured person who failed to reveal relevant details. This meant, of course, that the accused, being bankrupt, had no money to repay anyone.

So all legal recourses have failed. The result is that there is no prospect of any reasonable means of restoring equity. They have all gone.

The innovative approach that we put forward in the background paper that I referred to would eliminate much of the futility associated with legal action in fraud cases and restore equity on a shared responsibility basis. When I first lost my \$600,000 as a result of fraud cases, I was the one that eventually got onto the fact that wrongdoing was occurring and I became what might be regarded as a whistleblower in that situation. I note that one of the members of your committee would have some small knowledge of this because he was of some assistance in the eventual successful outcome of it.

The point I am making is that before I became associated personally with loss through fraud I believed that we had a system of law that could do something about it. I am totally and utterly and irrevocably convinced now that the legal system that addresses these matters is totally inadequate. It is inadequate for the following reasons. The first cab off the rank is the corporate body, ASIC. ASIC will take it so far but it has nothing in its machinery that allows it to have anything to do with restoration of equity to individuals. It tends to hand it to the police fraud taskforce and that, of course, being a police matter, has the end result of prosecution and jailing, which gives little help or support to the people who have lost not only their money but in many, many cases their means of livelihood.

Of course, the third bracket of law available to people is the civil law where they say you might take actions for damages against the person and for restoration. But, as I said in my background paper—and I repeat it here—that is not a realistic situation for the simple reason that legal recourse takes a long time. In one case I am personally involved in at a corporate level we paid out \$200,000 for legal fees and at the end of the day we were told that there was little hope of getting any restoration. In that instance we are only one of 200 people involved, so you would be looking at millions of dollars in legal fees and a situation that gives you no guarantee of any resolution at the end of it. In fact, the legal system seems to delight in playing the merry-go-round in these things and at the end of the day it seems to us that the person who is being protected is the person who has perpetrated the crime and the people being punished are those that are left to pick up the pieces. As bad as that example is, it is not the worst example of cold-blooded action to defraud investors against which the public at large is quite defenceless.

I wish to draw the committee's attention to what I believe is one of the severe consequences of all of this, and that is the method towards which fraudulent activities are trending. There is the deliberate compilation of false information and documentation. There is duplication, counterfeiting and fraud on a large scale. We find that people are being encouraged to enter into mortgage agreements, put their money up and get the documentation which contains stamps purporting to be from the registry. When, as an added precaution, you request directors' guarantees, these are submitted, signed—counterfeit. You end up with a piece of documentation that to all intents and purposes is a legal document and there is no way of knowing that it is counterfeit until the end of the period when you try to recover the funds. There are no funds and there is no recourse at all unless you try to go through the courts and, as I say, that is increasingly proving quite futile.

There is evidence that financial advisers and agents continue to operate within the industry despite having been deregistered. On two occasions, the offenders have previously been registered or deregistered and that information has not been promulgated. It seems to be that the only persons that know that they are deregistered are those that do it. In this paper I suggest that, at some stage, government agencies such as the registry of land titles must insist on the production of proof by way of identification so that those dealing with finances must remain registered. You see, they can be registered. They can resign or they can be deregistered and, as such, that takes them outside any indemnity arrangement that might otherwise exist and the people—the investing public—have certainly no defence against that type of action.

The other thing I would suggest to you is that improved technology has made it near impossible for ordinary mums and dads, ordinary people that have been brought up in the regime where you trusted your bank manager—nowadays we do not deal with bank managers, we deal with financial advisers who are barely out of the cradle in some cases. These mums and dads I talk about—and, as I say, on my books at the moment there are over 500 of them in South Australia—become quite emotional about this. It has affected their health. It has affected their way of life. It has affected their income. It has affected their whole being, and this is why I am here today to plead the cause for those people.

You would have to say that the actions of those that do this are blatant. They are skilful. They are deliberate. They are predatory. They prey on the trust, gullibility and vulnerability of the ageing, in particular. As government representatives you would know that the government trends, both coalition and the opposition, are towards self-provision and retirement down the track, and we know why that is so. We know that as a declining work force there will be a declining taxation base, there will be reduced ability of social services to meet those things. Given that, and given the encouragement of the government through Telstra and other share placements for the public to be self-sufficient in their old age, I would say that the other half of that equation is that they have got to become confident in it.

It has got to be a provision that does not allow people to come out of the woodwork and whip the money from under their noses at a time of life when there is no way of recovering that money—not through work, not through anything. There is a whole section of the population that I call the lost era people. These are the people of my own vintage who did not have access to superannuation which you have been discussing today, or contribute to superannuation to the degree that it is, nor have they been a party to the large increases in salaries that have occurred. If they have amassed some money they have done it sacrificially down the years in the same way as they continue to make provision for their children and their future. They may be out of step. That isn't the point. The point is that their equity and their right to life has got to be protected against people whom I say are in it for what they can get out of it in many cases.

Those are some of the circumstances that require what I believe are stricter preventative measures and penalties for unlawful actions, and include amendment of current legal processes and penalties. I realise that this committee, as structured, is not particularly perhaps looking at the legal processes area, but I believe that it is inimical to the problem that legal processes do not give victims any hope of a resolution. It may be beyond the power of a committee or a government to do much about that long term, but if that is a fact, then the government and committees of this nature may make a contribution towards the establishment of my suggestion

in my background paper which is a finance industry fraud indemnity fund. Being a responsible citizen, I believe that investors would not be adverse to paying a portion of that—making a contribution to that—so that all financial transactions would attract a small percentage. In other words, it is much more meaningful and perhaps more attractive to the government if the investors that are looking for protection are prepared to put their money where their mouth is and make some contribution to that.

I would like to see stricter preventative measures across the board in current legal processes and penalties. You would be aware, Sir, that what we are encountering is something like this: the money is misappropriated and, when you do the money chase through ASIC or through the police task force, you find that it has gone out of the account which the predator has had control of, it is has gone into an account in his wife's or his children's name and it has become a family trust, and family trusts in civil court actions are inaccessible in the main. We see this in some rather notorious Western Australian cases where they can still live high on the hog and the people who have lost their equity seem to be whistling in the wind.

As I say, I did not start out with this idea, I arrived at this idea through bitter experience over four years of deep involvement in this fraud area. I believe that protracted legal processes have passed their use-by date. I say that it is not an area for judges to be sitting there with wigs and gowns pontificating on. All you get, and we have had experience of it, my \$200,000 attests to that, is legal stumbling blocks and rhetoric, defensive tactics, delaying tactics—every time, there is an adjournment to such and such a time—and the only people who seem to gain out of all of that is the legal profession themselves. I would even go so far as to say that the legal system assists white-collar criminals to avoid or minimise the consequences of their criminal actions. The victims are left angry, denigrated, frustrated and very often destitute. That is a statement of fact. Unrealistic sentencing is a regular occurrence, as is the use by criminals of victims' funds to mount protracted legal actions. What I mean by that is that the money that they have taken from people is used against the people when they seek legal recourse for recovery.

A more sinister aspect of that is that white-collar criminals in the finance industry—and I say there are as many who aren't as there might be who are—know that they can ultimately win in a legal system that gives them up to three or four years through delaying tactics. My fraud situation occurred in 1996. We are now in the year 2000 and there is no sign or hope of recovery because of the delaying tactics that continue to be roadblocks to justice. They prevail within the legal system even in circumstances—and this is an important point—in South Australia—and I can show you transcripts of it—where the defendants have admitted liability. There is no doubt about the liability. But even in those situations, the legal processes are worthless to us. They might put the person in jail but they do nothing to get the money back—the misappropriated funds. Of course, it would be a known factor that old people who have been defrauded of their total equity—and I have seen people crying and threatening suicide, I have seen them finish up in hospital, of all ethnic groups. Some cope with it better than others. Some become very—

CHAIR—Can we just identify these moneys. Either they are moneys that have been taken out of superannuation funds for further investment for retirement, or they are other moneys built up during a lifetime that you are investing for retirement type purposes. I just want to try and identify the type of environment in which you really find yourself.

Mr Beaton—I am not talking about superannuation per se here. I am talking about either independent retirees or semi independent retirees. There are as many retirees who have access to a portion of social service benefits as others. These people, by government urging, invest their money with these finance people—

CHAIR—Some of it is likely to be superannuation money that is wanting to be invested, isn't it?

Mr Beaton—Yes, very much so. I would suggest in the context of superannuation that, as the superannuation impetus gathers and the take-home pay at the end of the day increases, there is going to be an awful lot more of these. I would suggest that there is at least a concurrent knock-on effect with superannuants as there is in the people who have merely invested capital.

CHAIR—We take note of your comment:

The Australian Institute of Criminology in a report compiled for the Institute of Chartered Accountants stressed that "Australia is in imminent danger of a fraud epidemic unless action is taken by government and the private sector to prevent it ...

By way of reassurance, I wish to advise you that we intend to take evidence from Mr Graycar, who is Professor of Criminology at Melbourne University, because we can see this is an emerging issue. Senator Sherry has certainly flagged his interest in the committee looking at post-superannuation retirement moneys and how secure are they. That follows on from, once the payments have been paid out of the superannuation system, what sort of position people find themselves in and what safeguards are there for people such as yourself. That is a little down the track. The first one is, perhaps, a little more imminent. I just thought, having come this way, I should say we are in the process of looking at this because we recognise the problems that people such as yourself find yourself in.

Mr Beaton—I am glad to hear that, Senator. Having raised that point, I will just continue by saying that, from the public's point of view—I publish a quarterly magazine through AIR, and we continually hitting on this question and getting masses—

CHAIR—AIR?

Mr Beaton—The Association of Independent Retirees. There is an abundance of correspondence from people asking for help, help that we cannot give them because it is very often in the legal area, but it is help that could be given if there was a fund like the one that I am advocating in my submission paper—a default indemnity provision fund—administered by the government or through one of its agencies. I know there will be reluctance from the government to go down that track. I know that, and it is obvious why there would be a reluctance to do it. Most governments would not willingly put their head into that particular den, but it has worked in the past effectively, and South Australia is an example of it, and would continue to have worked, had they retained the fund under the government control and not given it over to the industry control. If any fund was contemplated, I would suggest it would be rather important that it remain under government regulations, at least, if not control.

We nominated an imposition of a 0.25 per cent levy on all financial industry transaction payments jointly by the person that seeks the protection and the finance industry. The end result of that, for me— what I am after—is this: these people that defraud know that the only hurdle they have to encounter is a legal one, and they know that is a toothless tiger, and they know they can beat it long-term. They can beat it by putting their funds aside so that they are untouchable, they can beat it by protracting the legal processes, they can beat it by depriving people of their money so that they do not have the finances to take civil law at the extent of \$200,000 over four years. They know that and, therefore, they are not afraid of the consequences, because the consequences can be avoided.

The simplicity of my approach is this: if you had a situation where the industry in itself is having to meet the cost of restoration of equity—in other words, the cost of restoring stolen funds—through a levy of that nature, then you could have the person that has lost their money and their livelihood paid out and the industry would be liable to then chase the legal resolution in the same way as they are doing with the Western Australian cases that I mentioned. Sure, it is a large step and it is a daring concept in some ways, but there is no other concept. The issue is quite obviously black and white: the old people or people that you encourage to save will stop saving. I would rather spend my money.

In my paper here, I say that you have a situation in which one of these people has defrauded millions of dollars. He buys himself and his wife the Mercedes, runs around town with that, the children go to the best of private schools and the judge that looks at it quite blatantly says that this is scandalous and it must stop. I have given you in this paper some evidence of that. I talk about the Attorney-General of South Australia. He recognises the ‘vulnerability of the investor public when unscrupulous dealers target older people.’ He is the Minister of Consumer Affairs. He has put out a paper on that and is advocating that something should be done at government levels to address it.

Senator SHERRY—Mr Beaton, we are going to run out of time. I just want to explore a couple of issues, and I think other members of the committee will as well. What strikes me as unusual for us is that superannuation moneys that are in the system, within a trust system, until a person retires—reaches 55—are protected against theft and fraud. There is a compensation mechanism that is applied.

CHAIR—Generally

Senator SHERRY—Generally. But when you leave the system, you take the lump sum, and I think there is a strong argument in principle, and there should be in practice, that those moneys are protected against theft and fraud. You made a number of very valid points about superannuation moneys growing. Where do we draw the parameters around a scheme that protects against theft and fraud for people who have retired and who, I accept, are more vulnerable?

The first issue I want to raise with you is: you have money sourced from superannuation which is growing but you might have money sourced from other areas when you retire. Often people do have that. So I raise that as an issue that needs to be considered. The second issue is: how do we compensate in the event of theft and fraud for all forms of investment by someone

who is elderly? This money could be anywhere. A person having made a decision to invest could have put the money into a very speculative area; the money is not lost as a result of poor return but it is lost as a result of theft and fraud. Where do we draw those definitions, if you like?

Mr Beaton—I am only concerned with the situation where there is theft and fraud. As you say, the superannuation funds are protected to some degree but not totally. It is a factor that there is over 42 per cent of the Australian public who are private investors. That is a large percentage. Much of that capital is vulnerable. The one happy note is the RetireInvest outcome, which you probably know of. That is a situation which is unbelievable in that you had the finance manager, the finance agent, of a big company like that who colluded with a brokerage house which was 110 years old—grandfather, father, son.

In my case, I was not a player in a market fund. I had blue chip stocks, they were returning me an invested return and that is what I lived on. When the investigation continued there was a computer print-out produced to me that showed that my capital had participated in 1,500 transactions in the previous year—a computer print-out that thick—in an area of options trading that I knew nothing about and would have resisted like the plague. You can multiply that by 200 people because that was the number of people that were involved. What was done there, to show you the depth of this problem and the need for it to be addressed, is that my portfolio would be sold—BHP, ANZ, Commonwealth Bank—and the money realised through selling that would be used to buy speculative stock, et cetera, and then it would be restored—it would be bought back again—at the point of time when there was a dividend. It is a most sophisticated thing.

It is not somebody just stealing on the spur of the moment; this is structured theft. In that particular situation they employed seven people—young accountants—at night-time to keep track of the transactions of taking and putting people's money. It was a very, very structured situation and it is to the credit of RetireInvest that they faced up to their obligations and restored the equity in total.

CHAIR—Yours was outside that system, wasn't it?

Mr Beaton—My situation was inside that system. As I say, I was the one who got on to the anomalies that were occurring and took steps to try to minimise it.

Senator SHERRY—But in that case there was no legal requirement, as I understand it, for RetireInvest. At the end of the day, they settled—and I know there is some litigation going on, so I am being careful—more because they did not want their name, quite justifiably, being criticised publicly in the flow-on impact of that. What worries me is you could have another RetireInvest, not necessarily the same company but another operation, where there is no legal requirement to settle and they just fold and there is no hope of getting any money in those circumstances.

Mr Beaton—That is more likely than unlikely; that is the scenario that we have to fear. Liquidation seems to be the way out and, of course, liquidation or bankruptcy does occur and it is so easy to put it into place. The people are left whistling for their money and it is not there. So

I am urging strongly that we do not allow it to continue that way. We have to get ourselves an indemnity fund where the finance industry pays up to give the people protection for continuing to deal with them. The logical conclusion is that if we do not arrive at that solution, then organisations will have to tell people that it is futile investing money, or indeed saving it, it is far better going on social services—that way you get it and it cannot be taken away from you. I realise it is late on a Thursday afternoon and you have probably had a very long day, but I just want to refer to the bottom of page 2:

A.S.I.C., W.A. regional commissioner James Ogilvie, said “it was unacceptable that investors should be exposed to losses as a consequence of maladministration.” “Any unacceptable conduct including inadequate disclosure and mishandling of trust funds, will be dealt with swiftly and effectively”

That was published in the newspaper, as I have indicated there.

Senator SHERRY—What did he mean by that? He says, ‘will be dealt with swiftly and effectively’. the fact is that the legal process is not swift and effective. I just do not understand how he can say that.

Mr Beaton—You could take that point, but I think all he is doing there is expressing his frustration with the system in that he knows that it is protracted and it takes a long time. He gives you the proposition that would be acceptable, ‘swiftly and effectively’, but he does not tell you how it is going to be done.

Senator SHERRY—That is right, and surely part of the solution is compensation for moneys quickly, regardless of litigation continuing.

Mr Beaton—That is exactly what is required.

Senator SHERRY—And if there is going to be legal fault found at a later date, and hopefully some moneys—and it could take some years— people in your circumstances do not have to wait years finding legal liability and trying to get hold of the funds that are left, and usually there is not a lot left, unfortunately.

Mr Beaton—No, that is true. I would ask, if possible, that my paper be included in the *Hansard*. It is a logical sequential thing now.

CHAIR—It already has been.

Mr Beaton—I am free to answer any other questions or just merely to thank you for the opportunity of expressing myself. That is of some help.

CHAIR—Thank you very much, Mr Beaton, for appearing before the committee. We are off to Queensland tonight to hear further cases of problems up there, because it appears there is just an unacceptable number in this area. I have some agreement with the Institute of Criminology and I see it as our role of trying to protect investors and provide adequate safeguards.

Mr Beaton—Senator, if your committee at any stage wishes to have access to the things that I have mentioned, like computer print-outs with options of 1,500, I would be happy to produce those.

CHAIR—We will take your word for that.

Mr Beaton—There is quite a bit of stuff that I can produce if it would assist the committee.

CHAIR—The committee might be interested in one or two of your selected articles from RetireInvest.

Mr Beaton—All right, I will send you selected articles.

Senator SHERRY—What might be useful too, from your perspective, is examples of other cases. RetireInvest got a lot of publicity at the time and was settled in a reasonable way in a reasonable time frame, but there must be other cases and much worse outcomes.

Mr Beaton—And I have details of those if that would be helpful.

Senator SHERRY—Information from your association nationally and information that you are able to provide from other states would be very useful.

Mr Beaton—Okay, I will certainly put some details together and forward it to you for consideration.

CHAIR—Thank you very much, Mr Beaton. Thank you for coming along.

Mr Beaton—Thank you.

CHAIR—That concludes the committee's proceedings. On behalf of the committee, I thank all witnesses who have given evidence for their participation today. The committee stands adjourned until tomorrow morning in Queensland.

Committee adjourned at 4.55 p.m.