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SENATE

SELECT COMMITTEE ON SUPERANNUATION AND
FINANCIAL SERVICES

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

FRIDAY, 30 MARCH 2001

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SENATE
SELECT COMMITTEE ON SUPERANNUATION AND FINANCIAL SERVICES
Friday, 30 March 2001

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

Senators in attendance: Senators Hogg, 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 8.59 a.m.**CROSBY, Mr John Frederick (Private capacity)**

CHAIR—I now declare open this public hearing of the Senate Select Committee on Superannuation and Financial Services. This is a supplementary public hearing in terms of reference A of the committee's main terms of reference into the topic, incidentally, of prudential supervision and consumer protection for superannuation and banking services. The hearing today will focus on the issues relating to the collapse of Commercial Nominees Australia Limited, sometimes referred to as CNAL. The aim of today's hearing is to take evidence from individual investors who have been affected by this CNAL collapse and from a representative of a financial advising firm that referred clients to CNAL's investments.

At a later time the Australian Prudential Regulation Authority, APRA, and the Australian Securities and Investments Commission, ASIC, will be invited to appear before the committee as government regulators of CNAL. You may recall we originally scheduled for them today but, given the unfortunate collapse of HIH, the committee felt that it was perhaps better that they appear before the committee in May while they attend to the important responsibilities of piecing together some of the problems that are faced by a lot of the policy holders.

All the witnesses who appear before the committee are protected by parliamentary privilege with respect to the evidence given before the committee. This means that they are given broad protection from action arising from what they say. The Senate has power to protect them from any action that disadvantages them 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 witnesses wish to discuss with the committee in private the committee will consider the request.

I would first like to welcome Mr John Crosby—and if your wife would like to come to the table please feel free to come and assist your husband. It is not an easy position you find yourself in today. We would like you feel fairly free and comfortable. We invite you to make an opening statement and following that the committee will ask you a number of questions.

Mr Crosby—I have lodged a written submission and a supplementary submission. In compiling my submissions I have tried to balance my concern for our own superannuation fund and some of the lessons learned which could be of a wider benefit to this committee and its work. I have therefore endeavoured to keep the objectives of the committee in mind. My own situation and experiences therefore are intended to be something of a case study as well. I see the committee focusing on a case study approach on this CNAL.

I am sure that it is not intended to have an unreliable system and, of course, it should not be tolerated. It should be prevented. The prudential system should be there for the protection of consumers or investors in superannuation. It is clearly intended to be close to faultless. To me at least that is clear from the general principles that are already contained in the policies of the government and the existing legislation. I think, too, that it is not too idealistic to have that objective.

My submission therefore is to assist the committee in its work to help protect and encourage Australians to provide for their own retirement with the degree of security and protection

against the expected and unacceptable conduct of the APRA approved trustees, and to encourage a positive, caring attitude and professionalism on the part of the industry and regulators intended to give effect to these high principles. I am therefore proposing to briefly refer to my written submission, mention the highlights and important passages, and answer any questions the committee may have in relation to the suggestions. I have tried to highlight the learning points at the end of my written submissions in dark type.

I have a summary at the beginning which I could refer to. I am mindful of the very large task that the regulators are asked to perform. My observations and submissions are critical of the regulators—not so much of the legislators. This criticism is meant to be constructive and it is aimed at encouraging better performance—we can all improve. I will accept criticism and comments on my submissions as well.

I have drawn from my own background qualifications and experience and on information I have been able to collect in the process which has now taken many turns over what is already a long and painful period of nearly five months. Let us hope there is not much more to endure, but I know wheels move slowly. The whole process has been a particularly painful and hurtful one. It is something which is to be avoided, I think, by strong action and a concerted effort by those who do have authority. I am greatly encouraged by the diligence and interest shown by the committee and particularly the chairman. I know everyone has other functions to perform. I understand the chairman and members all share in the concern of this unprecedented conduct by the APRA approved trustee company, CNAL. I have expressed in my supplementary submission concern also about the impact the failure of the HIH Insurance may have in overshadowing the seriousness of the CNAL situation. It seems to be in evidence already here today.

I have not covered some issues which I think are important. There needs to be some regard for organisations to take over failed trustees—a pool of acting trustees seems to be a fairly arid guideline. Acting trustees are presently employing the very people who caused or contributed to the placing of the funds, in my case into unauthorised investments. There is some sort of a revisionist approach, I think, taking place in trying to convert the cash-at-bank categorisation of investments to units in ECMT, and that view seems to be shared by the few submissions by others I have read. I think that is a particularly critical and important aspect. All this adds up to potential for new fraud—if fraud of a civil or criminal nature has not already been committed. There is need for relief for the continuing trustees, also, from liability of old trustees and, of course, the absence of audit in this whole thing is an unbelievable situation. We find that even now there is no audit of the funds to 30 June 2000. Who pays for the entire process?

CHAIR—No audit or auditor?

Mr Crosby—No audit completed, as I understand, to 30 June 2000—fascinating. There is more transparency required. I think the acting trustee, whom I just had the opportunity of speaking to two days ago, is trying to get into position. However it seems to me that they have been placed in a very difficult situation to work from records and material forcibly taken, I believe, from CNAL.

If it is not too long a summary, Mr Chairman, I have set out in the summary paper—just picking one or two highlights—the prudential supervision consumer protection for

superannuation, in particular, has failed. Commercial Nominees, an approved trustee, has breached virtually the entire regulatory system, from what I hear and have been able to establish, with virtual immunity until belatedly removed as a trustee by APRA. Auditors and other professionals have failed to discharge their duties and uphold the prudential supervision. APRA and ASIC, the regulators that are charged with prudential and statutory duty to supervise and correct non-complying conduct, also seem to have failed.

Investigators and auditors appointed by APRA have also failed. I am overusing the word 'failed' but I think the litany goes on, as you will see in my summary. In my written submission, I have tried to contain the relative provisions under the index and lead through from the terms of reference and the process of choosing an APRA approved trustee. Why an APRA approved trustee? The short answer is because of a perception of security and reliability. Those points were highlighted in paragraph 2 in my submission.

In the section on developments in 2000, I have gone into a little bit of personal history—the process of actually consulting the different organisations I mentioned in paragraph 3. I have also gone into how the rollover moneys were to be held and the investigation of options. In paragraph 4, I talk about the deficiencies and failures of CNAL as an APRA approved trustee and the complicity—as I have put it—of APRA and ASIC, which is almost unbelievable, particularly when there is a featuring of this company, Peel Valley Mushrooms Ltd, which has failed also, I believe. That is one of the investments that was made. And so on.

I do not want to unnecessarily dwell on the submission, but if I can spend one second on post failure remedies and resources used in needing to redress the CNAL, it is very devastating to actually have to marshal resources and find out how to redress this failure, which is presented almost as a *fait accompli* by the directors—whom I think I have described in here as dummies who were appointed after, it seems, many changes in the directorships of this company. This is rather aggressive criticism, but I could not think of another way to describe it.

Senator HOGG—You are referring to page 10 of your statement?

Mr Crosby—Yes. In paragraph 7 on page 11, I say that I think your own committee has been grossly misled by the failures. It is up to you to try to put some discipline into the processes. I did actually refer in paragraph 8, on banking and financial services, to some other related aspects. For example, how did the cheques actually get cashed and put into this fund? I still have not got to the bottom of that yet. The cheques were made out in a specific way and some way or another they seem to have gotten into the wrong account. I have addressed that in the notice as well.

CHAIR—Where is the rest of it?

Mr Crosby—That is yet to be finally resolved. How can employers assist to help identify and find out what is knowable information—if it is knowable information—and what impact might this have on other trustees? There seems to be a view that other trustees conduct their cash management accounts, for instance, in a very similar fashion and therefore there is a risk of this being glossed over.

In the next item about the press, although it is another bastion of public protection I do not think a word appeared. It is unbelievable—with the incisiveness of the press—that they were unable to do more. I know that is not within the authority of your committee to necessarily address.

In paragraph 12, I have reserved a very large mention for what I feel is a complete failing by auditors. Somewhere on the agenda today I have gone into quite a lot of detail with regard to dealings with financial advisers. Most of the intrigue, I think, centres around the vendors and associates of the real estate and business transactions of the failed assets. It would not take a lot for competent professionals to trace through some of those transactions, and I hope that work will not be overlooked.

On insurance, we have already seen the failure of HIH—which, incidentally, was the insurer of this company to 29 June. I have correspondence back from the lawyers informing me that the events that I am complaining of occurred after that date and that there is a separate insurer. But HIH is featured in this, at least on the historical side.

I think there are serious doubts about the solvency of CNAL. My submission addresses some of those in paragraph 16 on pages 19 and 20 and also suggests how APRA and ASIC, both of whom enjoy special status in relation to Corporations Law, winding up and other processes, can act if they are motivated so to do. I have also addressed the question of business intrigue—it is the smallest paragraph in my submission and the one of which I know least—which will probably bear a lot of fruit if properly investigated. Cost and financial impact: there has been very serious impact on our family. The total and overall cost to the government must be horrendous already. I am in the business of trying to control costs and manage legal costs. I do not know who is watching the bill, keeping a calculation of just what this process must be costing already.

Staffing and resourcing workload: in my processes, I have heard it said, particularly by the APRA people, how it has been almost impossible for them to keep up with their tasks. Maybe it is a question of being under resourced in that area. I have outlined all the litigation that we might have to undertake if we had to pursue this thing. There are paragraphs where I have paid tribute to the committee. It is marvellous that the committee has taken the interest to do this. It has been a pleasure to meet the members—I have not met Senator Sherry. I hope you have the tenacity to hang on and go further with your work.

I made the supplementary submission about HIH. I need not have because it is all in the papers. Then I mentioned a zero tolerance policy as a possibility. It is spoken about in the United States more for drug matters. It is a very draconian step, but something to look at. I thought the MOU, the cooperation and the gaps that exist between ASIC and APRA are so wide and so badly organised that I am making some suggestions as to how they might be addressed. The consultation process may be more focused on professional processes for risk and risk management. Then, of course, there is the superannuation investor's dilemma: how does a superannuation person wanting to provide for the future avoid these traps of APRA approved trustees failing? This is apparently the first real failure where the public are invited to participate, but I know that there are other failures, too, in employer schemes and through bad management and failed trustees. Those are my opening remarks.

CHAIR—That was a very moving presentation. Thank you for the vast amount of detail that you have sent to the committee. Why did you choose CNAL to put such a large sum of money into at one time? Did you choose to put the money there or was that trust selected by your employer?

Mr Crosby—It was not selected by the employer. The employer required me to get a certificate from an approved trustee. There were three payments made and I had to present the employer with a certificate so that they knew it was going to an approved trustee. The moneys were supposedly to be parked pending completion of this portfolio of investments, to start an allocated pension from December and then later January just passed.

CHAIR—That was January 2000?

Mr Crosby—That was in 2001. The moneys went in from 26 July. I did not choose CNAL as such. I had actually set up the fund a year or so before. It was set up with CNAL as the trustee by financial advisers at the time and I thought it was ideal. The structure was perfect for what my wife and I wanted, and it could accommodate up to four other family members. The investment portfolio then had to be worked out on the basis of balanced, aggressive, et cetera. While that was being done, it was supposed to be held in trust pending the development of that portfolio.

Senator SHERRY—Regarding Senator Watson's question, you would have to have authorised the moneys to go into CNAL, wouldn't you?

Mr Crosby—Yes.

Senator SHERRY—Why did you do that? What led you to CNAL?

Mr Crosby—Financial advisers who set up the fund in 1999 recommended CNAL as an approved trustee, and I put in the first payment in 1999. It stayed in cash for quite a long time before it was placed into other trust investments.

Senator SHERRY—What is the total amount of moneys that you have placed in the various accounts?

Mr Crosby—In 1999?

Senator SHERRY—No, what is the total up-to-date amount that you have placed in various accounts?

Mr Crosby—That is \$1.18 million, plus \$45,000 in 1999.

CHAIR—Is the first amount of money that you said had been invested still intact?

Mr Crosby—Yes.

CHAIR—That has gone into a reputable investment somewhere, has it?

Mr Crosby—It has gone into what is called a balanced portfolio, which was the instruction that CNAL had for my entire investment. The last payment was not collected until 4 October and the financial adviser had not actually finished the development of the portfolio at that time—as to so much into this, so much into that.

CHAIR—So the money that went into the enhanced cash management trust that we are referring to was not at your direction?

Mr Crosby—No, not at all. Definitely not at all.

CHAIR—You mentioned earlier that cheques had been made out.

Mr Crosby—The cheques were made out to Commercial Nominees Australia Ltd as trustee of the Crosby family superannuation fund. That is how the cheques were made out by the three—I did not make out the cheques. The cheques were made out by the employing companies.

CHAIR—By an employer company.

Mr Crosby—Yes, by the employer company.

Senator HOGG—The amount at stake there was the \$45,000?

Mr Crosby—No. I placed the \$45,000 in 1999 and then in July 2000 there was three hundred and something thousand dollars from the employer company. The total superannuation from AMP-Shell was \$700,000 and \$20,000 was from Shell Coal.

Senator SHERRY—I think we can get a bit lost in all the detail. It is important to understand the principles and what went wrong, because we want to try to fix this. You worked for Shell, did you?

Mr Crosby—Yes.

Senator SHERRY—How many years were you with them?

Mr Crosby—I was with them for 21 years.

Senator SHERRY—You had no problem with the security and investment of your superannuation while it was in the fund with Shell?

Mr Crosby—No.

Senator SHERRY—It is when you left the system and you had been made redundant?

Mr Crosby—Yes, I had to leave the system. I had no choice to stay in the system at that point, so I had to nominate an approved trustee.

Senator SHERRY—What concerns me is that you were well protected when you were employed, and then you were made redundant. You had to make a choice about what to do with all your redundancy.

Mr Crosby—Everything.

Senator SHERRY—It is everything—it is all your life savings when you left the system. Given your experience, do you think that Australians generally are able to have the knowledge to make these decisions?

Mr Crosby—I think so. With proper guidance and proper information, yes—and the assumption that the approved trustee is the highest order of a trustee that one can have. But it takes a long time to even get to that point. You need to do a lot of research, digging and information gathering to do that.

Senator SHERRY—That is the issue that I am trying to explore. You are an experienced businessperson working for a major company—Shell. I think you are an intelligent person, and you prepared an excellent submission—one of the best I have read—which is before the committee. What really worries me about this is: how are other Australians? You believe you made an informed decision—

Mr Crosby—Yes, I did.

Senator SHERRY—and it has gone wrong. I am not criticising you.

Mr Crosby—I am criticising myself.

Senator SHERRY—I am not criticising you. I think what has happened is appalling. But other Australians, millions of Australians, are going to be faced with these decisions.

Mr Crosby—Yes.

Senator SHERRY—Do you think we can reasonably assume that millions of Australians—when they get their lump sum superannuation and if they get redundancy pay—are in a position to make these sorts of decisions?

Mr Crosby—If they make the decision to place it with an APRA approved trustee, that is not the only decision they will need to make. You can actually have your own DIY fund and get your accountant down the road to fill out the forms every year, which a lot of people have done. I did not want to do that. I wanted the added security of the APRA approved trustee. Even today I probably would not want to have my own DIY fund because I know about risk, so I would use the APRA approved trustee as the surrogate, risk free person.

Senator SHERRY—But I think DIY funds, the small superannuation funds, are still part of a regulated system.

Mr Crosby—But they do not have the protection of the superannuation industry supervision—

Senator SHERRY—I understand that, but they are still part of a regulated system—

Mr Crosby—Yes.

Senator SHERRY—which, in this case, used to be the tax office.

Mr Crosby—Yes, but there is no safety net if you choose to do it that way. Only what they call the small APRA funds have the supposed safety net. I brought along the details of that system. You can look, for instance, through section 229—this is sounding very legalistic now—which is the application for assistance process. All the prudential provisions are in the act, and you are probably all very familiar with that. I have just had to learn about all of this as I did not know any of this before; I just assumed that it was protected. Now I know that it is protected by the—

Senator SHERRY—In what way did you believe it was protected? My understanding, for example, is that it is protected in the event of theft or fraud. Do you understand a protection to exist beyond that?

Mr Crosby—Yes, of course.

Senator SHERRY—Are you saying that you thought it extended beyond theft and fraud?

Mr Crosby—I did not even consider theft or fraud when I investigated it. I just assumed that all the regulatory procedures would be there and that it would give the maximum so-called surrogate or low risk protection—the maximum protection—which I knew was not available.

Senator SHERRY—Did you believe that that was protection against market rises and falls?

Mr Crosby—It cannot be—never. That has to be fully understood by everyone, or otherwise you have this floodgates issue. You can never protect against that.

CHAIR—Coming back to the way the cheque was made out, it would appear to me that your employer, Shell, has acted very responsibly by requiring an approved trustee.

Mr Crosby—Yes.

CHAIR—I cannot see what more it could require. But it was made out to, as you describe—that could have given CNAL an opportunity to deposit that cheque anywhere, because it did not designate the balanced fund nor did it designate the cash fund, did it?

Mr Crosby—No, but it did designate our fund: the Crosby family superannuation fund.

CHAIR—Your fund was in the balanced account?

Mr Crosby—I do not know. I believe the money has gone into the enhanced cash management. I have requested information on this from ASIC. I do not really know and I do not even know yet from the banks which account it went into.

CHAIR—Where did you expect your money to be paid according to the way the cheque was made out?

Mr Crosby—I expected it to be paid into an account by the name of our fund, the Crosby Family Superannuation Fund, in trust. My understanding was that it would be a trust account, and that the money would be held in a trust account pending the development of the portfolio.

CHAIR—You believed that your money in the balance sheet was described as cash in hand?

Mr Crosby—It is called cash at bank, actually. But I did not get that statement for months after. What I did get were the three letters, which I think the committee has, which said that it would be held in cash.

CHAIR—Do you think the bank has got a responsibility there?

Mr Crosby—They could have. I have looked up the cheque acts to try to determine that.

CHAIR—You make the fairly serious statement that the committee has been deliberately misled in its work. Can you add a little to that?

Mr Crosby—The reason I came to that view was that I stumbled on the report about the committee's work at midnight on a Saturday night in early January. I could not believe that there was a Senate select committee holding hearings up to 17 October on this whole issue of consumer protection and prudential supervision of superannuation and not a word was revealed to the committee. That is why I then sent the email at that hour. Shortly after, I got the response from the committee to say that, yes, they were inquiring. The reason I said that you have been misled is because I would have thought the regulators would have highlighted such an impending failure as this to your committee; and, if they had, that it would have been in the proceedings of the committee on the net.

CHAIR—One letter from the regulator indicated to us that they became very aware in about November once it stopped paying. That opens a number of questions: whether the chairman actually knew what was going on, whether the chairman himself was misled or not informed as to what was going on, or whether it was just an attempt to pull the wool over the committee's eyes?

Mr Crosby—I was astonished to read about the committee and even more astonished to find that it had not been mentioned.

Senator SHERRY—I am very concerned about APRA. We have been investigating some other superannuation funds in Queensland and we have had some hearings up there. There was a report in the *Financial Review* earlier this week about the alleged failure of APRA in their regulation in this area. We have now got HIH. APRA is only about 3½ years old—it is a new regulator. From what you are saying, you believe it is a dud regulator.

Mr Crosby—I can see how it can be improved. Dud? I would rather agree with that than disagree.

Senator SHERRY—At your stage in life, when you have been made redundant, you should not have to be worrying about the safety, in terms of theft and fraud, of your lifetime savings. The regulator has failed you.

Mr Crosby—That is right—precisely. And I have been trying to find the reasons why the regulator has failed. I have not had a lot of success yet about that, other than very poor business methods and organisation.

Senator SHERRY—The sad thing is, Mr Crosby, you are one of many thousands so far.

Mr Crosby—So I hear.

Senator SHERRY—There are thousands of people in funds that we have been checking in Queensland where the regulator not only failed to regulate but actually botched the replacement trustee and investment manager.

Mr Crosby—I read that yesterday in the *Financial Review*.

Senator SHERRY—Do you think that we should be having a hard look at the regulator and trying to shake it up?

Mr Crosby—You have to look at the regulator. The regulator is not beyond improvement; it needs to be improved and, yes, shaken up.

Senator HOGG—In your submission you mentioned the regulator not having adequately qualified people because they are all out in the marketplace.

Mr Crosby—Yes, that is right. That statement is related to a comment by the CNAL people when I talked to them, that there are no good people in APRA or ASIC—all the good ones are in private practice—and that they really are not afraid of the regulator, ASIC or APRA.

Senator SHERRY—When APRA was created, 3½ years ago, my understanding is that a lot of the experienced staff of the old ISC were lost. But from my observation it goes beyond the lack of suitably qualified staff: there is a resourcing issue and there is an issue relating to sheer incompetence in the regulator, from what I have seen so far—

Mr Crosby—I think so.

Senator SHERRY—which does not reflect well on the regulation of both our superannuation and our insurance industries.

Mr Crosby—I think you have summarised it very well, from what I have found out, and that is why I thought that the committee was not being—

Senator SHERRY—My concern—and obviously a concern for you in your circumstances—is that we have about eight million Australians with superannuation savings. If the regulator continues this botched job, many of them could face similar circumstances—

CHAIR—That is a bit too extreme.

Senator SHERRY—Many of them could. We already have tens of thousands of people who have lost money as a result of APRA botching its job.

Mr Crosby—The good ones obviously are there. There are some good ones, but there are so many bad ones that you are right. The bad ones are so bad that obviously they should not be there. That is why I have also taken a bit of heart to say that the system actually does work to a certain extent. It is not very well oiled. The CNAL was replaced three or four times—three funds and then our funds—so if they know how to work their own system it can work. The regulators seem to be timid. I used the analogy of using the soft method of regulating, rather than the more efficient method. But the act is there and it is a relatively high-hurdle act, yet people just walk straight through or over it.

Senator SHERRY—You are right; the act is one of the toughest in the world in terms of regulation in this area.

Mr Crosby—It is very impressive.

Senator SHERRY—The point is that the act has to be enforced, and in your case the regulator appears to have been deficient in the carrying out of its tasks.

Mr Crosby—Yes. Incidentally, on the issue of fraud and theft, I do not think that the act actually says that in section 229, but obviously if there is fraud and theft it is meant to cover that.

Senator SHERRY—But the sad thing for you is that it could be years for this to be sorted out in the court and before you get to the point where that may be the case.

Mr Crosby—It is up to the minister. The minister has discretion to do it whenever he wants. He can impose conditions, and he can step in and authorise the collection of moneys through actions by the trustees. There are lots of options for the minister to cut costs and to return the whole thing to a creditable state and still get the money back via a process.

Senator SHERRY—You do not know of any actions taken by the minister to date, do you?

Mr Crosby—No, because I do not think he has been asked to yet, other than yesterday.

CHAIR—There was placement with a trustee.

Mr Crosby—On Wednesday I was told by the new trustee, PricewaterhouseCoopers, that they have made an application to the minister pursuant to section 229 of the act. I am sure that

they have much more information than I have to justify that application. I did ask them to make it.

Senator HOGG—Mr Crosby, one of the things that struck me was at paragraph 6 in your submission and that is the resources that seem to be used by CNAL against the likes of you. In our brief discussion prior to the commencement of this hearing you indicated to me that you knew of only one other person, or had spoken with one other person, who is in a position similar to you, whilst there are probably many, and you mentioned:

Victims such as ourselves have had to incur considerable legal costs.

Can you give us some idea of the legal costs that you have had to incur and what remedies could be taken where there are a number of people affected, such as you, who are seemingly in isolation to commence with and there seems to be nothing to draw you all together to pursue the complaint? What remedies could you anticipate we might look at?

Mr Crosby—Taking the last bit first about bringing people together, we all know a bit about class actions, et cetera, that some law firms will take up. Some people are affected because they entered these schemes a long time ago. Some are very recent entrants and their circumstances vary a bit in that there are some different legal considerations. But the popular way of doing this is via class actions. Only the very large law firms with a lot of support are competent and have the resources to be able to marshal what is needed. I did speak to two of those law firms and they have some interest. I have had difficulty in even getting a lawyer to advise me in Sydney because CNAL has got basically five of the major law firms acting for them so they are tied up—all the ones I knew, ironically. So I have had to get somebody else. It has cost me \$20,000 for legal advice to date, including Queens Counsel advice, all of which says that I have got an absolutely perfect case and we should just be issuing the writ and going for it.

Senator HOGG—You are saying that basically there is an inequality in the process because you are just a small player compared to the controlling interest of CNAL?

Mr Crosby—Yes. The interests of other people who may have had five per cent or 10 per cent of their funds invested in 1999 before the mushroom debacle had their monies paid out, et cetera. Ours were virtually just paid in and they evaporated. The minute that they were paid into the account—they were not invested in crazy schemes, et cetera—they just evaporated because that account was impaired. There is actually \$2.6 million still being held which, I think, includes our monies. By this time some sort of caution was returning to the CNAL administration and the monies are just sitting in a bank account at the moment. The considerations are different. My fund's legal rights might be quite different from those of other folk who had their monies lost earlier on, for instance.

Senator HOGG—I just want to refer in that same area to your comments where you said:

There is effectively no accessible dispute resolution process where beneficiaries can have quick access to a process that is staffed by competent and authoritative people.

Mr Crosby—A very good point, Senator. I wonder about the teeth and the usefulness of the tribunal because under my scheme, I have to give 90 days notice to CNAL to complain about the things that they have done. They have 90 days to hatch out some sort of a reply before I can

then refer it to the tribunal. I have been in touch with the tribunal, and was earlier on, because that is a much more sensible process than litigating these things for 10 years. I looked up the case of Abrook in South Australia—it took about five or six years. I have referred to it in here. But, yes, if you had a process that is there and it had more legs and moved better, then you have got the makings of a fast resolution process.

Senator HOGG—So that was decidedly an inhibiting factor in your case.

Mr Crosby—It was, because of the 90-day period. I do not know what happens now, because they do not actually exist anymore. If I get a reply saying, ‘Yes, take your case to the tribunal,’ then that might still be open for me to do that. I am not sure yet whether that will happen.

CHAIR—From what you said, it now appears there will be many litigations in terms of people’s priorities of when they put their money or took it out.

Mr Crosby—It could be, because some will have a common interest and some will have a separate and individual interest. In fact, one case where I saw the lawyers representing others they were going to try to bring it altogether, as the senator is suggesting there. They said, ‘I am sorry, your case is different. We are not going to be able to do it for you because your interests are contrary to the interests of all the others who have lost by the mushrooms and retirement village.’

CHAIR—It is certainly a field day for lawyers, and the individuals probably get very little out of it.

Mr Crosby—The insurers issue then.

Senator SHERRY—But even then it is pretty typical for such a matter to take five or six years.

Mr Crosby—That is what Abrook took.

Senator SHERRY—The incredible thing about it as well is that the people who are facing these difficulties are usually retired and elderly and often die before the case is concluded.

Mr Crosby—I hope I survive.

Senator HOGG—We are not wishing that upon you.

Mr Crosby—I am very aware that that could happen.

Senator HOGG—One thing that must exercise the minds of average Australians out there is that when you had such a large amount of money why was it all parked in the one place? That must exercise a lot of people’s minds. I understand that purely for the sake of convenience that is what you would have done. What is your comment on that?

Mr Crosby—That, if it is supposedly a safe place, put it together because you have to aggregate it all to start the pension, otherwise you are getting five different sorts of pensions if you divide it into five different parts. The moment the portfolio is devised, it goes into 20 or 30 different places.

CHAIR—It is a question of timing.

Mr Crosby—Cheques have got to be cashed to start with, and that is all that actually happened here. The cheques were cashed and the instant they were cashed they evaporated. That is what I am told. But, yes, you are right, that the portfolio which is already written up puts the funds into many different trusts, listed trusts et cetera. So this cash management trust, as they are calling it, which I am told is not a cash management trust at all but a bank account and it is supposedly cash at bank, is the place where the moneys are collected and then reinvested into the different chosen investments.

Senator HOGG—I had to get that on the record because there may be a misconception as to the processes.

Mr Crosby—In fact, the materials they gave me were that high, of all the different trusts and things that were being recommended to distribute the funds.

Senator HOGG—And you felt comforted by the weight of paper?

Mr Crosby—No, I felt daunted by the weight of the paper, because it took me a long time to get through it all. This is all the different funds.

Senator HOGG—And do you believe you got across that at the end of the day?

Mr Crosby—To a sufficient degree, yes.

CHAIR—Thank you very much, Mr Crosby. It is a moving account and a very unfortunate account. We will certainly do our best to try and see that justice is done and we have an improved system in the future where people have the utmost confidence in superannuation.

Mr Crosby—Thank you, Senator.

[9.50 a.m.]

WATTS, Mr Eric Morris (Private Capacity)

CHAIR—Welcome, Mr Watts. Thank you very much for your submission. Would you please highlight the main aspects of your submission, including whether it was your decision to put the moneys in the fund or somebody else's decision?

Mr Watts—As I said in my short submission, I was employed as an air traffic controller for 32 years until I was given the opportunity of taking a redundancy package. At the time, that was a pretty good idea because I had suffered a heart attack a couple of years prior to that and felt that my days as an air traffic controller were definitely numbered. So I took the package and, having no financial experience at all, I was faced with the problem of have a large amount of money—large for me, anyway—and having to do something with that money to last for myself and my wife for the rest of our lives. I was with the Commonwealth superannuation fund. Air traffic controllers did not expect to have long lives. As an air traffic controller there is an early retirement aspect and I could have retired at 50—I was almost 52 when I retired. I did not have the option of rolling the money over into the Commonwealth superannuation fund. I think that has changed now, but at that stage I could not. I could have rolled it over into the AvSuper fund, which is run by Airservices Australia, as it was then, or do what I wanted with it. There was a certain proportion—about \$170,000—that was preserved until I was 55. The balance I could have taken down and put on a horse if I had wanted to. I cashed it out. I was advised to cash it out, pay the tax on it and then do what I wanted with it.

I looked at lots of different alternatives. I had two plans drawn up, one by Perpetual Trustee, which was the only trustee company I had ever heard of, to be honest. Another one was done by a branch of Mercantile Mutual. I interviewed lots of people, including a local investment adviser and the NRMA. I tried to acquaint myself with what I could and could not do. Saxby Bridge advised me in the end. I chose to form a small APRA fund because it seemed to offer a very safe place—it had a trustee. I organised myself a little do-it-yourself fund. It was open to abuses in that I was the person who made the final decision as to the appropriateness of any particular investment. I will explain the role of the trustee in the fund. They had an ability and an obligation to look carefully at all my investments to make sure that they were appropriate for a superannuation fund.

Also with a small APRA fund, I could have my two children included in it. As you know, these days kids do not seem to stay in a job very long. They have already had four or five small jobs working through the university and each time they do they get a small superannuation fund. I thought we could get all that together, put it in one place and, as they move from job to job, it would give them a repository so that they would have something to look after themselves as they get older. The small APRA fund looked after that aspect as well. The way the system works, as it was explained to me, I would put the money straight into the fund. Commercial Nominees Australia was an APRA approved trustee in the same way that Perpetual Trustee was—I discovered there are a few trustee companies in the same vein. I would place the money into my superannuation fund and it would go straight into the ECMT, which is a cash management trust, which was the only way I could get it in there.

As explained to me, my different investments—and I studied carefully the investment advice given to me by Saxby Bridge—were going to be put in different share trusts and building trusts and whatever. I got a rundown on their performance and I looked them up in various magazines and found that they all looked like reasonable places to put your money. I realise there is always risk when you invest in anything including real estate. I thought they were good investments and over the long term at least I could be pretty sure that they were going to perform reasonably well.

The way the system worked was that any interest that came back from those would go straight back into the bank in superannuation, the cash management trust, and then could be reinvested in different areas. When I finally decided to retire and started to realise assets within the fund—when I started to draw money out of it in the form of an allocated pension—monies were then realised and went into the cash management trust and that is what the allocated pension was drawn out of. The ECMT was an integral part of my superannuation fund. It never even occurred to me, to be honest, to look at where the money in the ECMT was being invested. That was like cash at the bank. My understanding was that it was the short-term money market, government bonds—that sort of thing—just the same as money at any other bank is invested, and it was as safe as any other bank can be. I realise that any money in my savings account at the ANZ Bank is not necessarily 100 per cent safe but it is pretty safe. It is about as good as you could get. The interest we were getting was about five per cent or 5½ per cent, which is about the same as you get on a 12-month or six-month deposit at the Qantas Credit Union where I had some money. That was not high interest. It was explained that it would be high interest and high risk or low interest and no risk. There were no entry or exit fees with the ECMT because it was just at the bank. It was run by Commercial Nominees of Australia, an approved APRA trustee. They also ran the cash management trust so it did not occur to me that my risk lay in that area. I thought the only risk I would have would be in the investments I made within superannuation, and I looked at those rather carefully.

I have got a good friend who could not be here today—he would have liked to have been but he has got another job, thank Heavens, and is in Townsville. He tried to draw some money out to put a deposit down on a unit because he is based here in Canberra now and he discovered he could not. That is when we thought, ‘Hang on, what is going on here?’ and we made a few frantic phone calls.

CHAIR—What date was that?

Mr Watts—That was early in November, as I remember. He rang me and that is when we started looking and discovered the whole thing had been frozen, and you know what happened from there.

CHAIR—Was it before 15 November? This date is fairly critical.

Mr Watts—Yes, I can confirm this at a later date. I could ring Kel and ask him. It was before we got any letters and before there was anything in the press. The first thing I knew was when he rang me and said, ‘Eric, I cannot get my money out.’ I am more fortunate than Kel. I have got about a quarter of the \$420,000, I think it is, in my super fund and about \$100,000 worth is in the cash management fund. I thought it was about \$90,000 but apparently, according to the last statement I got, they had taken money out of my cash management fund on paper to pay

tax—but in fact they had not taken it out. Now I have got to find some money somewhere to pay my tax bill and that leaves me with about \$100,000 or so in the cash management trust.

CHAIR—Also, your APRA charges?

Mr Watts—I paid them, I paid my APRA charges.

CHAIR—You had to pay your APRA charges?

Mr Watts—I was not game not to, to be honest. I got a letter of demand from Commercial Nominees saying that I had to find money somewhere to pay APRA, the audit fees and my tax.

CHAIR—It is extraordinary that you have to pay audit fees when APRA say that they had no responsibility over this fund because it fell outside their jurisdiction.

Mr Watts—But I was not game not to. I said to myself that if I did not pay my APRA fees then I cannot complain when APRA does nothing for me. All of a sudden I do not know what the legal response will be. I am just an ordinary fellow. So I went to the bank, I drew money out and I paid APRA. I paid audit. I told them that I was not going to give them any money for tax, that I would wait until I got an assessment from the tax office and I would pay them direct because I did not want to give them any more money. So I would not pay their fees and charges until they had unfrozen my account. I was not going to go to the bank to get more money out to pay Commercial Nominees, or for that matter, my advisers Saxby Bridge—none of them wanted me to pay it either. But I thought it was important that I paid APRA so I have done that.

Senator SHERRY—You paid APRA and they denied responsibility for regulation?

Mr Watts—Yes—I was not game not to.

Senator SHERRY—I understand. I just find it incredible that APRA then denied they had any responsibility to regulate the fund you had paid money to APRA to have regulated.

Mr Watts—I first rang Mr Burgess at APRA after we got the letter and after Kel could not get his money out. I said, ‘There is something wrong here. You regulate it.’ He said, ‘We have heard nothing to suggest that there is anything wrong with Commercial Nominees.’ I said, ‘Well, for heavens sake, do something—they have frozen the ECMT.’ He said, ‘We just can’t go barging in. It has got to be more than just a couple of complaints. There has got to be something wrong before we go barging in.’ I thought, ‘Bloody hell!’ So I rang up ASIC—I forget the bloke’s name, I wrote it down in my report there—

CHAIR—It is Mr Earl Burgess.

Mr Watts—Mr Burgess was with APRA.

Senator HOGG—Mr Transfield.

Mr Watts—Mr Thomas Transfield at ASIC. He pointed out that it was nothing to do with ASIC, it was APRA's responsibility, and because I was a private citizen with a little do-it-yourself fund ASIC had no responsibility in my area. So I wrote Mr Burgess a letter. I never got a reply to that.

CHAIR—Did you contact APRA?

Mr Watts—I rang them—that was Mr Burgess. Then I sent Mr Burgess a letter requesting that APRA investigate. There were obviously problems with CNAL because—

CHAIR—What did Mr Burgess tell you?

Mr Watts—When I spoke to him the first time I asked whether they had heard of any problems with CNAL. He said no. I said they were the regulators.

CHAIR—What date was this?

Mr Watts—About 16 or 17 November—pretty well straight after we discovered the whole thing had frozen up. He said no. The impression he gave was that they had no reason to believe that there was anything wrong. I subsequently discovered that they were in fact investigating problems—

CHAIR—Do you know who froze the assets of the cash management trust?

Mr Watts—I understood it was frozen by Commercial Nominees themselves because they discovered they were in an state where they could not continue. It made sense to us because I had a program of trying to dribble my money out of the cash management fund into trusts to try to even out the bumps in the market, I would be make an agreement with Saxby Bridge about what was going to be done, they would instruct Commercial Nominees to invest so much money out of cash management into trusts and it did not happen.

CHAIR—Did any of your money get reinvested into any of the conglomerates within CNAL?

Mr Watts—Thank heavens, no. I still have a concern about this. I have been told three or four times that I have got nothing to worry about, but I worry like hell. The way it works with my super fund is that, rather than my fund going out and buying shares directly in, say, AMP, or directly in the share market, I buy into a trust. Rather than Eric Watts personally going out and buying shares in, say, the Credit Suisse International Share Fund—

CHAIR—Who is running that trust?

Mr Watts—Credit Suisse would be, or whoever it happens to be.

CHAIR—That is all right. CNAL is not running it for you?

Mr Watts—Rather than me buying, say, \$10,000 worth, CNAL would buy \$1 million worth or \$100,000 dollars worth and they get a discount rate. So there is nothing in my fund that is held by Eric Watts. Everything in my fund is held by Commercial Nominees Australia as trustee for me. If you walked up to Credit Suisse International and said, ‘Has the Watts family superannuation fund got 10,000 units in your fund?’ they would say no.

CHAIR—So if some of these other structures with CNAL fall down, it is not beyond the bounds of possibility that some of these might be subject to risk?

Mr Watts—The risk I thought I was taking on was that, say, Credit Suisse did not do as well as it might have.

CHAIR—Yes, that is fair enough.

Mr Watts—But the risk I now have is that all I have got is a little bit of paper from Commercial Nominees saying, ‘We have purchased on your behalf 10,000 units.’ All I have got is that bit of paper saying they have purchased 10,000 units. If they have not, I am in trouble.

CHAIR—My question is: how do we know the financial integrity of these other structures within CNAL, given the history of what has happened to the cash management trust?

Mr Watts—That is my problem; but it is not your problem.

CHAIR—Are you still getting distributions?

Mr Watts—No, of course not. I cannot get any more distributions.

CHAIR—From your other investments invested through CNAL?

Mr Watts—I sincerely hope so. The trouble is we did not get our end of financial year report for 2000 until January 2001.

CHAIR—On the cash management trust?

Mr Watts—On my superannuation fund. We are supposed to get three-monthly reports.

CHAIR—So that is behind, as well?

Mr Watts—I have got the end of financial year report for last year—that is the last report I have. Nothing else has been able to happen because everything is in such disarray. So I presume that everything is operating as normal with the investments I have made other than with the cash management trust. I just hope they are. I have got no reason to believe they are not, other than I do not trust Commercial Nominees. Hopefully I am not going to be back to worrying about that as well. My big worry at the moment is this enhanced cash management trust fund. Poor old Kel Morton was far more prudent than I was. He thought he would wait until everything had settled down and all his funds have gone and that is everything he has got in the world.

CHAIR—But you realise APRA did appoint PricewaterhouseCoopers to look at a number of the other funds excluding the cash management fund.

Mr Watts—They were looking at the other funds that were run by Commercial Nominees. They have got several other funds which they own and run. The only thing I have is the cash management trust which I thought was a bank. All my other investments are in external areas. My only involvement with Commercial Nominees was that they bought those on my behalf.

CHAIR—But probably still invested under the name of CNAL—

Mr Watts—Exactly.

CHAIR—in these reputable companies like Credit Suisse, et cetera.

Mr Watts—Yes.

CHAIR—So it all depends what transfers may have occurred.

Mr Watts—I just hope like hell that those transactions actually occurred where there were bits of paper that said they had bought 10,000 units of this and 12,000 units of that. The auditors presumably look at that each year.

Senator SHERRY—That is what they are supposed to do.

Mr Watts—Yes, but I am not financially smart—I am getting smarter by the minute—

Senator HOGG—I think you are doing very well. How much did you pay for the financial advice before you went into the CNAL?

Mr Watts—All up I paid about \$3,000 for one lot—probably about \$6,000 or \$7,000 on two plans I did not use. I looked at those and ditched them. I got a plan made by Perpetual Trustees and a plan made by people that I worked for—Mercantile Mutual was the parent company—and I did not use either of those. I cannot tell you exactly how much I paid for the one which I did use, Commercial Nominees—

Senator HOGG—Do you know roughly?

CHAIR—It would be a few thousand anyway.

Mr Watts—It was only a couple of thousand dollars, and that is what I liked about the plan.

Senator HOGG—Was it a flat fee or was it a percentage of the—

Mr Watts—No. You paid a certain amount of money for the preparation of the plan which set out recommended investments and how the whole system worked. It gave you a run-down on the performance and you had a little dossier on each one of the recommended investments, and the full thing—

Senator SHERRY—How much was that approximately?

Mr Watts—This is awfully approximate. I think it was probably \$1,000 or so—I do not know. I would have to check up on that. Then after that you paid 0.5 of a per cent of everything he had invested as a trialling investment to the adviser, I think it was. The whole thing worked out at about 1.5 to 1.7 per cent. I think the trustee got a percentage and the administration company got a percentage and you had to pay—

Senator SHERRY—In addition?

Mr Watts—No. The whole thing adds up to somewhere between 1.5 and 1.9 per cent per year, the variable being the mix of investments. Each investment you make has a management equity ratio. I really still do not know. I have tried very hard to understand how exactly the management equity ratio works. If you went out and bought shares in an international share fund right now you would probably pay in the vicinity of 2½ per cent to 3½ per cent per year on the capital invested to have your money sitting in that fund. You pay that on the actual amount of money you have got invested.

Senator HOGG—And what do they do for that fee?

Mr Watts—Presumably it is to the fund manager, or whoever it happens to be, to manage the fund. That is what they get paid for managing the fund. But because you have bought the thing through Commercial Nominees and they are buying at wholesale rates because they are buying such large amounts, that management equity ratio cuts down. The top end is about 1.72 per cent for international share funds down to about 0.5 per cent for a local share fund, and for the cash management, nothing at all. That averages out to be about 0.5 to 0.7 per cent. When you add your adviser fee, your trustee fee, your management fee—which was Commercial Nominees as well—and your MERs, depending on your mix, about 1.5 to 1.7 per cent of what you own disappears each year in fees.

I thought that was a reasonable scheme. In other places you pay an awful lot more. For instance, at NRMA, because I am buying smaller amounts, the MERs or the different decimals could have been more than that. I thought it was a really good scheme. It was cost-effective and it was safe because the money was held under a trustee, and the trustee was approved by APRA—and APRA is the government. I admit that I never went into the legislation on what APRA could or could not do. They said, ‘We are APRA approved.’ I thought, ‘You beaut; that is the government. It is as safe as you can be. It is as safe as the investments I make.’ As it turned out, of course, the thing that went wrong was not the investments I made, it was my trust in the APRA regulated trustee, and that was a big mistake.

The other two comments I wish to make on the submission is that what worries me now is that Commercial Nominees said that they looked like getting us about 20c to 21c in the dollar back. That was all that was left. Of my \$100,000, I get about \$21,000 back. I do not know how much more Ferrier Hodgson—the people ASIC appointed—are going to get back. What I do know is that I have to pay for it, and there is no guarantee. I have no idea of the terms under which they have been appointed. I do not know how much they will get back or if what they charge me for getting it back is going to be more or less than they get back.

CHAIR—So you are running short of cash now?

Mr Watts—No, I am lucky. I thought I was going to be retired forever, but I have a friend who works for Ansett, and he rang me up—they are changing the way they do things there, and we had 32 years air traffic control experience—and said, ‘Would you like to come and work for me?’ It sounded like a nice cruisey job and I thought, ‘That would be interesting.’ I had always thought I would keep on going until I was 55. So I turned up and it was not cruisey at all, I have to tell you.

CHAIR—When you phoned Mr Thomas Transfield of ASIC, he informed you that the matter was outside ASIC’s area of responsibility. Did he go into details? This was after 15 November, and we are trying to get the lines of responsibility. Once things start going wrong, ASIC then has a responsibility to move in.

Mr Watts—To the best of my recollection, the way he explained it to me was that APRA was the regulator of my trustee, and that had nothing to do with ASIC. As far as the investments that my trustee was making are concerned, if he was making it for a big commercial organisation—a public fund or something—then ASIC was interested. But because the investments were made on a more or less personal basis, because I had my own personal super fund, the investments made by personal super funds did not fall within the jurisdiction of ASIC. I do not know how true or false that is or how accurately I have reported it, but that is the impression I was given.

Senator SHERRY—You were in the Commonwealth government superannuation fund?

Mr Watts—That is right.

Senator SHERRY—Given all the troubles you have had and all the fees and charges you have paid, do you believe that it would have been simpler and easier if you had had the option to allow the money in the Commonwealth fund and have them advise you—if this was possible—and for them to have a number of options available for some sort of income stream product for your retirement?

Mr Watts—It may have been. I did have the option, because when the old DCA—it has had about seven or eight lives, and now it is Airservices—formed its own superannuation fund, I had the option of transferring to it. I did not take it up because AvSuper did not have an indexed pension as an option; you got a lump sum. I did my homework and thought that the indexed pension I was entitled to from the Commonwealth superannuation fund was a much better bet, so I stayed with it. I could have, when I did take my retirement, rolled everything that I had to be preserved and everything else I got hold of, because my redundancy and my early retirement were moneys that I had and, having paid the tax on them, I could do what I wanted with them. I could have reinvested that back into the AvSuper, had them look after it, and then—

Senator SHERRY—Are you saying you had the option of a pension?

Mr Watts—Because I am an air traffic controller and I was over 50 when I took the redundancy, I had the option of taking a lump sum from Commonwealth super or of taking a refund of my contributions and an indexed pension. So I get an indexed pension right now from ComSuper.

Senator SHERRY—I just wanted to be clear on that.

Mr Watts—In terms of the money that I am investing in my own personal superannuation fund—originally, I did not think that I was going to be re-employed—when I leave employment after the age of 55, it is converted into an allocated pension to supplement my ComSuper pension. When you retire at 50 years old, you get only a small percentage of what you would have got had you stayed on until 65. It is not a huge pension.

CHAIR—Thank you very much. It is good to hear that your circumstances were different from those of the previous witness. That is why we try to choose people who have different experiences. It helped us considerably.

Mr Watts—Another thing that concerns me is that, when APRA finally decided that they were going to sack Commercial Nominees as my trustee, for whatever mistaken reason, it was me who chose Commercial Nominees. They were recommended to me by Saxby Bridge but I looked at them and it was my decision. They have been sacked and PricewaterhouseCoopers have been appointed. I know nothing about PricewaterhouseCoopers. No-one ever asked me whether I thought that was a good idea. Of course I was very concerned about Commercial Nominees and had been talking to Saxby Bridge. Saxby Bridge were negotiating, as I understand it, with Perpetual Trustees and I thought, ‘For heaven’s sake, maybe they’re okay; I’ve heard of them at least,’ and I knew people who worked for them.

Senator SHERRY—You have heard of Mr Skase.

Mr Watts—I know.

Senator SHERRY—Be careful about hearing about people if there is a recommendation.

Mr Watts—They had a nice big stone building and I had looked into them when I was thinking of using them as an adviser and putting my money with them. And I did know people who worked for them. I thought, maybe if I am going down this path they would be a good mob. I would have to pay them of course. But APRA has now sacked Commercial Nominees and appointed PricewaterhouseCoopers. I have no idea how much they are going to charge me. Everything PricewaterhouseCoopers has done I am going to have to pay for, unless APRA pays for it. At this stage, I do not believe they intend to.

CHAIR—Don’t they?

Mr Watts—No, it is my understanding that my super fund is liable to pay for Ferrier Hodgson, and my super fund is liable to pay for—

CHAIR—Even though APRA have appointed them?

Mr Watts—Yes, that is my understanding.

CHAIR—We will take that up with them when we hear from them.

Mr Watts—At the end of that time, I will still have to find myself a new trustee because PricewaterhouseCoopers is only an interim measure anyway. It would have been far better had APRA spoken to me or to the people who own the funds to see what we wanted. I would have said, ‘Please let Saxby Bridge continue with their negotiations; Perpetual will take over.’ It would have cost me less in the long run and I would be where I decided to go this time. My whole control of my future and of my super fund has been taken from me.

Senator SHERRY—We heard from the previous witness, Mr Crosby, that application has been made under section 229 of the SI(S) Act—

CHAIR—You can’t expect—

Senator SHERRY—I will pose the question: do you think it is reasonable, given the act and the circumstances you and others find yourselves in, that assistance should be given? I agree with that request, by the way.

Mr Watts—I do not know the ins and outs of the act, but it seems to me that the position I found myself in now—

Senator SHERRY—You need help.

Mr Watts—is a direct result of me trusting the credentials of APRA.

Senator SHERRY—That is right; APRA has botched it.

Mr Watts—It seems to me that, at the very least, they should be funding their own disaster recovery action. They should fund Ferrier Hodgson’s costs and the cost of PricewaterhouseCoopers.

CHAIR—That is a very good point.

Mr Watts—It is not out of the question. I look like losing something like \$80,000. That is not a king’s ransom, but it is more money than I can afford to lose. Poor little Kel, who is like a brother to me, was only 47 when he took a redundancy because air traffic control was getting to him. At 47, he was the oldest surviving member of his family in living history. He did not get a pension so he put in everything. He paid his mortgage off and he put his money into a fund which has now disappeared. It is just wrong. We went into it and we looked at it. We did not take it to the races or go into a high risk venture; we tried to be conservative and reasonable. With that amount of money, I thought I did not have to be radical; I could be conservative, safe and do the right thing.

CHAIR—You are a prudent person, according to the law.

Mr Watts—I tried to be.

CHAIR—I agree with you. You have a government regulator, APRA—even though it is only 3½ years old—which is supposed to be doing its job. It appears not to have been doing its job—

in fact, I think it has botched its job—and it is quite reasonable to expect assistance in these circumstances, at least to help sort the mess out.

Mr Watts—It is a hell of a mess.

Senator HOGG—And each mess is a different mess. That is the worst part of it.

Mr Watts—What really worries me with commercial nominees is that if they are grossly negligent then the insurers pay; but if they are fraudulent it is my understanding that the insurers do not pay.

CHAIR—That is right. That is for most policies.

Mr Watts—I have been told that one of the directors is in South America. God knows how much the rest of them—

CHAIR—I see that one of them is in Nicaragua.

Mr Watts—That is not a bad place to be, I suppose.

CHAIR—It is possible that the government has power to institute a levy on all superannuation funds which, for the first time, might have to be called upon to meet the needs of people like you—but it will take a while to do.

Mr Watts—It would be a very brave government that would do that. It is unfair that it has happened to me, but it would be grossly unfair that someone who had nothing to do with my circumstances would be forced to pay out of his superannuation fund to compensate me for the mess that I am in. I think it is probably unlikely to happen—not before an election, anyway.

Senator SHERRY—That is actually required under the act.

Mr Watts—Is it?

Senator SHERRY—Yes. At a certain point in time.

CHAIR—It has not been triggered as yet.

Senator SHERRY—The cross-payment is effectively covered by the entire superannuation system, which is \$450-odd billion, so it is an absolutely minuscule cost when spread across the system. For people like you, Mr Crosby and others we are aware of, that is one of the safeguards against theft and fraud. But what concerns me is that APRA—the government regulator—is supposed to minimise these sorts of problems. Have you read of HIH and other problems?

Mr Watts—That terrified me, too, because it was my understanding that HIH was the insurer for commercial nominees. I rang HIH but they would not tell me, because obviously they cannot. I have since been told that Liberty insurance might be, but it seems to me that anyone

who took over as an insurer under those circumstances must not have been told the truth. Why would any insurer take on a risk like that mid-term?

CHAIR—I appreciate you coming before the committee and being so frank with us today. Has the committee offered to reimburse your expenses for coming?

Mr Watts—Yes, it has. Thank you.

[10.23 a.m.]

DALLY, Mr Phillip Bruce, General Manager, Saxby Bridge Financial Planning Pty Ltd

CHAIR—Welcome. You might like to comment on some of the issues that have been raised by the earlier witnesses. You have given us a very detailed submission, but rather than go through the whole lot—because of time constraints—please highlight the most important aspects of it and where you feel that we could do something in terms of highlighting APRA's responsibility or where the system could be improved.

Mr Dally—I am a certified financial planner. My own superannuation fund is also involved in this particular scenario in that CNAL is also the trustee of the Dally family superannuation fund. When we gave advice to clients we actually put our money where our mouth was and did the same thing from our family's point of view, for the same reasons that the other members of the public who have given evidence so far have stated.

There are a couple of things that we would like to put on record so that they are cleared up permanently. There were some press articles that Saxby Bridge had a financial interest or a shareholding in or some control over Commercial Nominees Australia Limited. Certainly that is not the case and has never been the case. The only association that the organisation has with Commercial Nominees is that of a pure business arrangement where we referred clients to them for trustee services of superannuation funds and for the administration and running of another public offer, Master Trust Fund, for which Commercial Nominees acted as trustee—they ran the administration, and a wholly owned subsidiary was the manager of that particular fund.

One of the problems that we see with this whole scenario is that it now appears that a number of parties within the industry, and certainly within the regulators, were aware of certain issues within Commercial Nominees for a considerable period of time.

CHAIR—How long?

Mr Dally—We believe at least since early 1999, when APRA were, to our knowledge, meeting regularly with directors of CNAL. We are aware that the directors of CNAL, as at 30 March exactly 12 months ago, went to APRA and notified them of impaired assets in certain public offer funds—the AWERF, Midas and Network funds—which had invested in the ECMT and another trust called the Enhanced Equity Fund, and appointed Peter Hedge of PricewaterhouseCoopers under a section 257 notice to investigate the potential impairment of those particular assets.

From my perspective today, looking at the list of members of the public this has impacted, I think if APRA had acted at the time they were notified there was an impaired asset in March 2000, when they appointed their investigator, and had CNAL been directed to stop putting any further moneys into that particular cash account, half the witnesses would not need to be here today because half of those funds would not have been impacted.

CHAIR—They might have been different witnesses.

Mr Dally—They might have been different witnesses, but certainly, from our records and knowledge, the size of the problem would probably be about half the amount in dollars. The largest group of people impacted from our client register were impacted because of the regulator's failure to act when they were notified of impairments.

The question has been asked: why did you choose Commercial Nominees as an appropriate trustee? Perhaps I am best placed to answer that, given that we have been responsible for advising both the witnesses you have heard from today and the next witness to use Commercial Nominees. As I put in my submission, we did some considerable homework looking at CNAL and the superannuation system before we acted. We believe we acted exceptionally prudently in that we made a decision to use an APRA approved trustee, as opposed to a self-managed superannuation fund, where trustees act as trustees for themselves in their capacity as members of a superannuation fund.

We were particularly concerned about the complexity of superannuation regulations in Australia. We were also concerned about the increased obligations of trustees resulting from the Superannuation Industry (Supervision) Act and the transfer of the supervision of superannuation funds to the ATO. It was not that we had a concern about the ATO, apart from the fact that any abuses would be more easily detected in the audit program and the audit capacity of ATO, but more that we could see that the majority of superannuation fund members that have established self-managed superannuation funds did so naive to their responsibilities, duties and, in fact, liabilities in acting as trustees. Certainly this parliament's passing of the Financial Sector Legislation Amendment Bill (No. 1) late last year really reinforces that there is now a strict liability on trustees for ensuring that duties are actually carried out appropriately.

We are not the only parties that recommended CNAL. In fact, their client list reads like a who's who of the Australian financial sector. Between them and the associated company, Strategic Superannuation Solutions, their clientele are companies like INVESCO—which is one of the world's biggest investment managers—AMP, ANZ, Royal Sun Alliance, State Street Global Advisers and a number of other fairly substantial dealer groups, particularly based in New South Wales. The directors at the time, particularly their non-executive directors, came with strong credentials. They also had as auditors the likes of Arthur Andersen, which were supposedly auditing the accounts. They had professional indemnity insurance for up to \$20 million for any one event, admittedly through HIH. That has, however, been claimed and my understanding is that the directors, when they changed the cover, did notify the new insurer of the impairment of the assets and the investigation by APRA.

The reason they had to change from HIH is that, when they notified HIH, they refused to actually renew the cover on the basis of that knowledge. The problems that we see really started to arise a little bit earlier than perhaps other witnesses have indicated today. We got a phone call from another adviser who had had a letter provided to him by a third party suggesting that there had been a liquidity problem within the fund.

Senator SHERRY—When was that?

Mr Dally—That was actually on 6 September 2000. At that point, we held a meeting with the directors of CNAL. We were advised that, yes, it was under investigation by APRA.

Senator HOGG—When did you have that meeting?

Mr Dally—We were notified on 5 or 6 September and we actually had the meeting the following morning.

Senator HOGG—On 7 September?

Mr Dally—Yes.

Senator HOGG—With CNAL?

Mr Dally—With CNAL directors.

Senator SHERRY—Is that the one who is now in Nicaragua?

Mr Dally—No. The director who is now in Nicaragua, I believe, left the board prior to 1998. We were advised that there were potential impairments but that it was mainly a liquidity problem; that they were closely involved with APRA via their nominee, Peter Hedge, from PricewaterhouseCoopers; and that it only was a liquidity problem and the majority of assets were recoverable. They actually outlayed the loans to a partnership called Peel Valley Unit Trust, which invested in a mushroom farm, and a Midway Gardens partnership. We asked why we were not notified because we had effectively, at that point, probably a \$10 million client exposure to that particular fund through various entities. We were told that, with the tacit agreement of APRA, had they actually notified clients and/or advisers, that would have precipitated a run on the fund and the liquidity crisis that they were concerned about. They were in the process of trying to reorganise those loans to take them out of the ECMT and put them into a more appropriate vehicle. It also appeared that the majority of the loans were made effectively to in-house type entities to protect the assets of capital investments that various other superannuation funds had made, particularly through the enhanced equity fund.

One of the major holders of the enhanced equity fund was the Australian Workforce Eligible Rollover Fund. You commented that investors did not know where their money was. The AWERF fund has probably been, until recently, the primary recipient of members of the former BHP employees' fund. Those members who do not notify their employer within 90 days of where they wish their superannuation to go will automatically roll from the BHP employer fund across to the Australian Workforce Eligible Rollover Fund.

CHAIR—Do you know what inquiries BHP made?

Mr Dally—They would have probably made similar inquiries to what we did as to their nature: whether they are an approved trustee, what sort of prudential indemnity insurance they cover and who is using them as a referee list from other major financial providers within the country.

Senator SHERRY—Mr Dally, I know this is difficult, but I think you are probably about two or three pages through your submission. We do like time for questions and developing issues. Given the time constraints, through you, Chair—

CHAIR—It is up to the committee, but it is fairly useful information.

Senator SHERRY—Yes, it is, but most of this is in the submission.

Mr Dally—It is mostly in the submission, and I am more than happy to take questions.

Senator SHERRY—I only got this one this morning but I will be reading it along with the others.

CHAIR—Do you wish to ask a question?

Senator SHERRY—What level of responsibility do you believe rests with APRA as the regulator?

Mr Dally—I believe it is significant, given that they were obviously aware. From discussions we have had with various parties and other members of the legal fraternity in Sydney, they believed APRA had concerns for what they called a ‘considerable period of time’. Certainly they had been regularly holding meetings with directors of CNAL over issues since early 1999. The other issue that is significant, and one of the reasons why we had started to look at alternative service providers, is that the superannuation legislation, as you are aware, changed effective March 2000. It meant that, for an approved trustee to maintain its approved trustee status, it needed to upgrade its net tangible asset cover to at least \$5 million. APRA had a concern because CNAL had not met that. From what we understand and were told by directors of CNAL, they met it technically but not in a way in which APRA were happy with. APRA had actually gone back to the legislators to try to get legislation moved to close that particular loophole because the security of the net tangible assets that they had was not to APRA’s liking.

Senator SHERRY—What is your level of confidence in APRA? You are a professional. I do not know your background, but I assume that you have been involved in the industry for some time. What is your view of APRA as a regulator, given the other problems that have occurred recently—for example, with HIH? We have been investigating a number of superannuation funds in Queensland. Is this instilling confidence?

Mr Dally—None whatsoever. In fact, our senior legal adviser would describe APRA as a lame duck regulator. Our senior legal adviser happens to be Mr Tony Hartnell, who is a former chairman of the Australian Securities Commission.

Senator SHERRY—Is that on the record anywhere?

Mr Dally—Probably not.

Senator HOGG—Why is it a lame duck adviser?

Mr Dally—Most of my contact has been with Earl Burgess from the enforcement and rehabilitation unit of APRA. Firstly, you can never get an answer. Secondly, he will tell you—and told me on numerous occasions—that he does not believe that they have the power or the regulations to be able to act and investigate in a way that both he and I would deem appropriate.

When asked why they did not act earlier, he said, ‘We needed to act on evidentiary proof.’ When I quizzed him as to whether they had seen the report that had been put in to ASIC by another dealer and that had been shared with APRA, he indicated that, yes, he had seen the report and, yes, it was an interesting read, but in fact there was no evidentiary proof that would enable them to act and they could take no action unless evidentiary proof was provided.

Senator HOGG—So you are saying that there is a legislative weakness being expressed to you by APRA?

Mr Dally—Definitely. That was expressed to me on a number of occasions.

Senator SHERRY—Do you think it is just that? APRA is a new regulator; it has only being in existence for about 3½ years. Did you have any dealings with the old ISC?

Mr Dally—Not directly. My roles did not bring me into contact with regulators. The current SI(S) Act is quite a good and strong act in the way that it regulates the industry. My main concern is that you have the ATO looking after certain parts of it, you have ASIC looking after other parts and you have APRA looking after another part.

Senator SHERRY—You have three regulators and we used to have one.

Mr Dally—It is very easy for them to say, ‘No, we’re not looking at that bit—it’s your fault.’ Whenever you have three regulators dealing with potentially the same issue, it is either the other one’s fault or there are going to be cracks between what they perceive to be their responsibility.

Senator SHERRY—The system is more complex now rather than simpler.

Mr Dally—That is one of the reasons we used APRA approved trustees—to take that risk off individuals taking on the liability and the understanding of the regulations.

Senator SHERRY—We heard from Mr Crosby, who has applied under section 229 of SI(S) Act for assistance. In your opinion, do you think that should be granted by the minister?

Mr Dally—I do. I have actually put that in my submission. I think the problem with this is the perception within the community of superannuation regulations being exceptionally complex and not necessarily appropriate. Any extra hints that there is risk in using a regulator that is approved by the government via its agency, APRA, or a risk that their action can actually bring clients losses will only impair the reputation of the superannuation industry.

Senator SHERRY—It is his regulator. He created APRA. It was his idea and his initiative. That is my recollection.

Mr Dally—That is correct.

Senator HOGG—In his evidence Mr Crosby told us that when cheques were made out he thought that the money was going to Commercial Nominees Australia Ltd as trustee of the

Crosby family superannuation fund. In his submission, he goes on to say that in effect the money went into an account that was:

... styled something like “Commercial Nominees of Australia Limited as Trustee of the Enhanced Cash Management Trust”.

Did you or any of your clients know exactly where that money was going, in terms of it being parked?

Mr Dally—Certainly what we were advised by CNAL, and what was disclosed within the key feature statement that was given to every client by Commercial Nominees, was that the funds would initially be parked into what they described as the Commercial Nominees cash management trust or enhanced cash management trust. Our understanding of that investment, as I have put in the submission, is that the only enhancement to the fund was basically using a line of credit facility through Colonial State Bank to fund a margin-lending facility into another unit trust, which Commercial Nominees managed. But, because of the security held, because of the instant liquidity able to be provided by the Colonial State Bank, there should never have been, and would never have been, any chance of any illiquidity, and all members could have redeemed their funds on the one day instantly with no particular dramas. We did not know about it until it was disclosed to us on 7 September 2000 by the directors that they had uncovered that previous directors had made loans to interrelated parties inside Commercial Nominees and, in certain instances, directly to directors of Commercial Nominees.

Senator HOGG—So the likes of Mr Crosby and Mr Watts—whom we have heard from—and a number of other people who have now submitted to this inquiry—plus you, I presume—would have known where the money was going?

Mr Dally—It was going into a cash management facility run by Commercial Nominees, the majority of the investments of which were with Colonial State Bank and were fully, 100 per cent liquid. In fact, their draft information memorandum indicated that it was available instantly at call; there was no requirement for even 24 hours notice or notice of a long-term nature.

Senator HOGG—I raised with Mr Crosby the issue that there are a number of people like him who are in varying circumstances but who are all finding difficulty with the one entity, CNAL, which has vast legal resources. What sort of assistance should be given to people such as Mr Crosby, Mr Watts and others to assist them in pursuing their rightful demands against CNAL?

Mr Dally—We initially looked at offering to fund a test case with the party that Mr Crosby spoke of, which perhaps would get together a group of individuals. However, as Mr Crosby described, our legal advice was that, because of the disparate interests and the nature and timing of events, they were to be treated differently. We do not yet know the size of the problem, because Ferrier Hodgson are yet to report, but my solution is that APRA could through its powers, or the minister could through section 229, compensate members for their losses and that it could then seek to retain and have given to it full recovery rights by all the members of all the affected superannuation funds—that APRA could effectively fund the recovery, which may in fact be commercial recovery either via directors, via the company or by the professional indemnity insurance that CNAL had in place.

There is one other concern that I raise in my submission that I think is particularly important—I think Mr Watts referred to it as well—which is the appointment of PricewaterhouseCoopers or their nominee company, Oak Breeze Pty Ltd, as interim trustee to the superannuation funds. We became aware that APRA might be considering exercising their powers under SIS and removing the license of CNAL. I rang Mr Burgess about 6 February and asked him if that was to be the case and got the normal response of ‘no comment’. I asked him if they were considering using their powers and he said, ‘No comment.’ He said, ‘Hypothetically, if we were to act under our powers under SIS and appoint an interim or specialist approved trustee, we would need to have a completely open and transparent process. We would call for tenders for trustees to take over the role of those superannuation funds.’ I asked the question as to whether or not, given our negotiations previously with the likes of Perpetual Trustees, if clients signed letters stating that they would wish a reputable trustee company with significant superannuation resources, like Perpetual, to take over as trustee, that would have any impact on APRA’s decision. I was told that it would have no impact at all on the decision, that it would have to go to tender but that the likes of Perpetual would be asked to tender for that particular job. I asked what the tender process entailed, whether it was a price issue. The issue was that it was knowledge, expertise and systems to be able to cope and, importantly, an ability to act quickly.

Six days later they appointed Oakbreeze, one of the directors of which, firstly, we potentially have a problem with because he was the initial investigator into the affairs of CNAL under the section 257 notice. Secondly, they had no resources and they had no staff. They are trying to recruit staff still to try and act upon the files. As of last night I still had not had a response from the trustees some six weeks—

CHAIR—PricewaterhouseCoopers are one of the biggest auditing companies in Australia.

Mr Dally—As an auditor company and a receiver company they are very competent and I would never challenge their competence in that area. What I am challenging is their competence to act in the capacity of a responsible superannuation trustee over 500 DIY funds when they have no resources to do that particular work. They are trying to recruit former employees of CNAL because they do not know how to drive the system. Most of the files are still sitting in boxes in the offices of PricewaterhouseCoopers and they have no systems. In fact, virtually nothing happened for two weeks because the first thing the directors did after the appointment was head overseas for two weeks holiday.

CHAIR—Directors of what?

Mr Dally—The directors appointed as the trustees of the DIY superannuation funds.

Senator HOGG—So they were not around to supervise the investigation?

Mr Dally—No, not at all.

Senator HOGG—After they had just been appointed?

Mr Dally—Yes.

Senator SHERRY—They did not go to Nicaragua for their holiday, did they?

Mr Dally—I do not know.

Senator HOGG—Nicaragua is a—

Mr Dally—But even now we still cannot get anything, as any of the other members will probably testify. We cannot get any reports and we cannot get answers. We have a number of clients that are now very distressed that they cannot get pension payments. And the thing that concerned me about that was that when meeting with one of the directors and one of their officers, they asked us if we could go to the members to get the bank authority signed to enable the recommencement of the pension payments. Yet that is totally and solely the responsibility of the trustees because they are the only persons that have signing authority over the assets of those superannuation funds.

Senator HOGG—Can I just take you back to the process? You said there was no tender process at all, as I understand it. So there was no openness, no transparency—no-one knows the fee that is being charged by PricewaterhouseCoopers on this occasion, whether it is—

Mr Dally—We have asked that question of PricewaterhouseCoopers. Their response was that they are mindful of the cost and are seeking advice as to how much they can charge through the clients.

Senator HOGG—And there was no prospect as to when they may do something that will positively assist the people affected because they are still recruiting?

Mr Dally—They are still recruiting. We are aware that an offer to them has been put on the table by Perpetual Trustees basically offering them staff, systems, resources and technical assistance, and they have declined and basically not responded to that offer.

Senator HOGG—This might be unfair but do you know APRA's response to the fact that the trustee they have appointed is seemingly slower than a wet week?

Mr Dally—I rang Earl Burgess when I was distressed that the directors were overseas and we could not even get any decisions. His comment was that they are the trustees of the fund; they are aware of their responsibilities and APRA cannot tell them what to do.

Senator SHERRY—But APRA appointed them?

Mr Dally—Yes.

Senator HOGG—Yes.

Mr Dally—I am only quoting what I was—

Senator HOGG—We understand. We are not blaming you.

Senator SHERRY—APRA assured you there would be a proper tender process—

Mr Dally—Yes.

Senator SHERRY—and obviously they would look at the quality, the effectiveness and the level of staffing when they appointed the replacement?

Mr Dally—Correct.

Senator SHERRY—And then they are washing their hands of it?

Mr Dally—Yes. We had great difficulty and five weeks after any pension payments had been made I rang again and at that point he offered to at least have a chat with the directors.

Senator HOGG—What is ‘have a chat’? There are chat lines on the Web, and you have a chat at Aussie’s downstairs. There are huge amounts of money and people’s livelihoods at stake. People are going overseas for a two-week holiday. They have appointed trustees that seem to have, at best, a disinterest in representing the interests of the people whom they are supposed to represent. I am stunned.

Mr Dally—Certainly, they have made it obvious to us and to other service providers in the industry that they see their role as interim—they want in and they want out as quickly as possible and to have no interest in maintaining it. As I have mentioned, their expertise is that of a receiver. Basically, I do not believe that they are acting in the best interests of the members of the superannuation funds that are affected by this problem.

Senator SHERRY—Given your level of expertise, you come into contact with people who seek investment advice—people of all ages, all walks of life and all backgrounds, I assume.

Mr Dally—Yes.

Senator SHERRY—I do see a level of urgency in respect of people who have put in hundreds of thousands of dollars—all their life savings—and then it is all gone. Do you believe that the regulatory framework and the compensation framework in those circumstances should be exemplary—that is, that we have to do something special to make sure that people are protected in those circumstances?

Mr Dally—I think that is appropriate when you look at the change in the system and the fact that they chose an APRA regulated trustee to protect themselves and to ensure that they did comply fully with the law. Certainly, that was our role in advising clients to do that. We are still stunned and amazed that a big-five audit house did not pick up that there were loans to directors in a cash management trust that they audited at the end of June 1999, yet that same audit firm now cannot come to a conclusion as to the value of that trust 12 months later, and our information is that the value of the loans to directors and interrelated parties has not changed substantially inside that period.

Senator SHERRY—It seems to me, looking at the material we have, that CNAL has been in trouble for some years. It was in trouble long before you knew about it. Effectively, both through its own actions and through the actions of APRA in not acting sooner, it knew that people had been convinced to put in moneys to try to prop up a failing trust. They were convinced to put in the moneys and to try to save what was already a failing structure anyway, and they have lost as a result.

Mr Dally—Certainly, it would appear to be the case that there were a number of investments that appear to have been made with the interrelated parties and that the last big block of money that they had was this thing called a cash account, and they had basically done loans. They have given their reasons, and part of my submission is a letter from the directors who approved those loans and the reasons that they gave for making those decisions. Certainly, yes, it would appear that they used the money of superannuants to prop up investments that were made.

One of the concerns I have does not necessarily relate to the DIY funds where we have had a particular involvement, but the committee may be well advised to look at the whole operation of the Australian Workforce Eligible Rollover Fund. The way in which we understand that fund was structured meant that it gave incentive for the managers to take an exceptionally high risk in the hope of high reward for returns on investments of other people's money. The way it was structured, it was guaranteed to give a return of—

CHAIR—This was a rollover fund?

Mr Dally—This is the eligible rollover fund—the one that accepts money from members who have not made a choice as to where they want their superannuation funds to go.

CHAIR—And in their trust deed they had this—

Mr Dally—They have very broad investment powers. It is designed to allow for a guaranteed return equivalent to CPI to members. One-third of any excess return to CPI is accredited and invested in the account of the member; one-third is credited to a reserve account—if in any year the investment returns are less than CPI, they can prop it up; and one-third of the excess return is paid as a performance fee to the manager and administrator of that superannuation fund.

Senator SHERRY—Who is the administrator?

Mr Dally—It was Commercial Nominees as trustee and their sister company Strategic Superannuation Solutions as the administrator.

CHAIR—One-third?

Mr Dally—Yes, one-third. One of the reasons we were given as to why they actually used the enhanced cash management trust money is that they had moneys invested from the Australian Workforce Eligible Rollover Fund in a pooled superannuation trust that invested in second-hand traded policies—life insurance policies, mainly from AMP. Because that particular fund was about to get substantial equity at the time AMP demutualised and the trust was structured so that it all did not vest in the investor's hands to start with, it dripped out over a number of years. Had the decision been made by the CNAL directors to take money out of that, they believed they

would have suffered a return loss and they would have missed out on what they believed would be a 12 to 18 per cent return that year. They instead borrowed moneys from here to leave that intact.

The incentive for the manager and the trustee was to ensure that, effectively, they could get an 18 per cent return out of that due to the fill-up return from the AMP shares. Take out the CPI, which in that year was running particularly low—it was probably about two per cent—and their individual return on that particular fund would have been about six per cent as an incentive fee.

CHAIR—When you became aware of it in about September 2000, all the damage had been done at that stage, hadn't it?

Mr Dally—Correct, and APRA was already investigating.

CHAIR—Fair enough. I was going to ask why you continued to invest moneys in that company. So, from that date on—September 2000—you did not invest any further funds?

Mr Dally—There was no direct investment. There would have been additional funds that would have found their way into the cash account, but we did not have a major problem with that because the directors told us that they had resolved to run a second pool and that all investments made after the notification to APRA would be put into a second notional pool—

CHAIR—But in fact they were not.

Mr Dally—It would appear now that they were not, or that the decision was overturned by the next set of directors appointed on 1 November. I do not know which of those it was. But certainly there was a letter from the general manager of the trustee company who was responsible at the time for administering that account, and he indicates that they were running this second marginal pool.

Senator HOGG—This might seem a self-serving question in a way: how important are forums such as committees of this parliament in airing issues such as this?

Mr Dally—From my knowledge, they are becoming increasingly important as channels or avenues for the public or interested parties to bring issues directly to the notice of the regulators. The fact is that when you are looking at dealing—as we have been—with agencies like APRA and ASIC directly for six or seven months, you do not get messages through and there seems to be an indication that no-one seems to want to tell you things—like the fact that ASIC had a report on their desk as early as February, looking at specific issues on the fringe of these impaired assets.

CHAIR—You have been reading the transcript of records from other committees. We have had some involvement such as economics and estimates and that sort of thing. Do you think the parliament has been misled by any of the regulators at those hearings?

Mr Dally—'Misled' is a very strong term.

Senator HOGG—Have they been less than full and frank?

Mr Dally—Potentially. One of the things that came out that did concern me is that it would appear that ASIC indicated that they only acted after they received complaints in this particular matter from investors who had been notified that they had lost money. They did not consider reports that we sent in in October to be a complaint; they did not consider reports sent in by another dealer group from Sydney in February to be a complaint. Therefore, they did nothing because no-one had lost money.

Senator HOGG—I think Senator Watson's question is a very important one, and that is what was partly behind my question. There should be full and frank advice to the parliament through the estimates process and through committees such as this.

Mr Dally—Absolutely.

Senator HOGG—Without putting words in your mouth, it seems to me that the issue that Senator Watson is raising is that there has not been full and frank evidence given to the parliamentary committees by the likes of APRA and ASIC. Is that a fair view?

Mr Dally—Certainly I can see why you would come to that view.

CHAIR—Thank you very much for coming down and for the detailed information you have provided to the committee.

Senator HOGG—I think we should make it clear to the other witnesses that this hearing has to finish at 12.45 p.m. because members of this committee have other commitments.

CHAIR—Yes.

Senator HOGG—It cannot go beyond 12.45 p.m. If we could have some assistance from the witnesses when they are addressing us, if they could give us a brief outline of their statement and then we might move to questions, that might assist our proceedings.

[11.00 a.m.]

BELL, Mr Spencer (Private capacity)

CHAIR—I welcome Mr Bell. You probably heard some of the earlier witnesses. Unfortunately, we are running a little late. We invite you to make a brief opening statement and we assure you that, even though you are speaking by telephone conference, you are protected by parliamentary privilege with respect to what you might say.

Mr Bell—I have submitted to you an outline of the difficulties that I am currently having with my superannuation fund. The trustee was Commercial Nominees of Australia. This trustee fund was set up in July and early August 2000. It was done in conjunction with our financial planner, Saxby Bridge. I heard a little of Phillip Dally's comments and of course I worked closely with Phillip in establishing this fund.

It seems that unfortunately I came in right at the end of the problems with CNAL. However, both my wife and I invested and rolled over the substantial savings we had in the other superannuation funds into this APRA approved fund. We chose an APRA approved fund because it would allow us to ensure that we met our regulatory obligations and it gave us a sense of security that we had supervision by APRA of the trustee.

Two basic problems relate to my particular case. The first is that when we established the superannuation fund, with the assistance of Saxby Bridge, we provided to CNAL a very detailed investment implementation schedule indicating where the rollovers were to be invested. We found subsequently that, even though the rollovers were acknowledged as being received by CNAL during August 2000, they were not invested as per instructions. In fact, the sum total of all moneys appears to have gone directly into this enhanced cash management trust account. The second problem, of course, is the value of the ECMT which, as you are now well aware, appears to have been substantially written down.

My dealings have largely been through Saxby Bridge because they first advised me of the problem. This went back to the end of October, early November, and subsequent correspondence from them indicated that there were a number of steps in place, with the regulators and with CNAL themselves, to ascertain the extent of the problems. I made direct contact with the directors of CNAL back in December of last year asking them specifically, in my case, what went wrong and why they did not act on the instructions we had given them in terms of the investments. I received a response back in January this year indicating that the new directors were investigating the issues and they would respond. However, time has overtaken that and, of course, I have had no response from them.

The difficulty I find at the moment, as with the other witnesses, I gather, is that we have invested substantial funds—basically life savings—and we are in a situation where there is, at the moment, a great deal of uncertainty as to what the likely outcome is going to be. I would expect, as I said in the submission to you, that the superannuation system is the cornerstone of the government's saving for retirement program. It is therefore fundamental and it is assumed that there is adequate protection in there for fund members particularly those who are working through trustee companies that are approved by the regulatory body, APRA.

I would expect that what I am seeing at the moment is a great delay in coming to some concrete position on clearing the problem with the funds and restoring the full value of the fund. The very important issue that your committee is establishing as to what went wrong and what can be done to improve the regulatory framework is a second issue. Again, there are two separate issues. One is to restore the members' position prior to this particular problem and the other one is how to fix the ongoing problem. My position with the committee would be that we are looking to see effective action on both fronts fairly quickly.

CHAIR—Thank you, Mr Bell.

Senator HOGG—One of the things that I think this committee seeks to do is to be preemptive rather than be reactive. We do not want to see these problems occurring in the first place. I just thought I should say that. I do not know whether that is what you had in mind when you were making some of the comments there. We can only be as reactive as the information we get from the public and from people such as you. Really, the responsibility lies with APRA. Do you believe that APRA has acted properly in this instance and, if not, why not?

Mr Bell—It would appear, from what I have heard, that APRA should have had reason to believe that there were problems with CNAL well before the middle of last year when I started to become involved in the situation. Therefore I feel that I would not be in the situation at all had they acted or that alarm bells had gone off and been appropriately followed up. As to why they did not act, I am sorry, I really do not have enough information to give you a reason.

Senator HOGG—Further then, have you made any representations to APRA about your situation and, if so, when?

Mr Bell—No, I have not. There was correspondence originally from Saxby Bridge indicating that there was a problem—and this was back in November—and that ASIC were involved in it. There was subsequent correspondence in December which indicated that APRA were also involved. What I was endeavouring to do was to get a starting point. I wanted some information about what the problem was. Through Saxby Bridge, which I was using as the key vehicle for protecting or putting my complaint forward, I was waiting on a starting point from the regulators or from Saxby Bridge to say how we should approach the situation. Clearly, there was also legal advice being sought by Saxby Bridge as well as to how we should proceed. I was keen to see what would come from that before we took it further.

Senator HOGG—What was your expectation as to what APRA would do, or could do, on the behalf of people such as you?

Mr Bell—I am not fully conversant with the act but I expected—

Senator HOGG—No, that does not matter. That is why we need your view.

Mr Bell—I would have expected that, somewhere within the act, APRA or the minister would have the ability—taking this particular problem, where you have an approved trustee that has failed—to be able to reimburse or compensate the particular members of those funds. Also, I would assume that the trustees have indemnity insurance as well and that somehow that could have been triggered. Therefore, my expectations were that, within the framework, there was the

ability for APRA to at least launch some sort of compensation program to immediately get the members of the funds back to where they should have been. That is what I would have expected from APRA, and a clear statement that said, 'This is what we are going to do and these are the steps we are going to take.'

Senator HOGG—Mr Bell, what sort of funds do you have at risk in this collapse?

Mr Bell—In dollar value?

Senator HOGG—Yes.

Mr Bell—About a million dollars.

Senator HOGG—I am sorry—a million dollars?

Mr Bell—Yes.

Senator HOGG—That you had parked in this cash management account?

Mr Bell—Correct.

Senator HOGG—Is that the sum total of your investment in superannuation?

Mr Bell—Yes, virtually the full amount of superannuation.

Senator HOGG—So at risk for you is the sum total of your retirement benefit and your expectation for a reasonable retirement has just gone up in a puff of smoke, more or less, when one considers the evidence we had this morning that the best people might expect out of the wind-up of the fund is 21c in the dollar?

Mr Bell—That is correct.

Senator HOGG—Senator Watson, I am speechless.

CHAIR—Have you actually retired, Mr Bell?

Mr Bell—Yes, essentially so. I have some other issues which I am dealing with at the moment. I have not fully retired but I am pretty close to it.

CHAIR—Thank you very much. As you would appreciate, a lot of the information that we might have asked you had you been an earlier witness has been covered and is now on the public record.

Mr Bell—Yes.

CHAIR—We felt it was important to hear from you as a person who had a different profile and for us to try to quantify the degree of risk, where that risk lay and who is responsible for it.

Senator HOGG—Mr Bell, I have one more question. In your submission to the committee you state that your investment instructions for your rollover were ignored by the trustee.

Mr Bell—Yes.

Senator HOGG—What were those instructions? Were they in writing or verbal?

Mr Bell—They were in writing. When I established the superannuation fund with Saxby Bridge, Saxby Bridge made, in conjunction with me, a proposal of what investments we would make. We agreed on that and then those investment programs were fully documented and signed by both me and my wife, who was the other member of the fund. It was those documents that would have been forwarded to Commercial Nominees giving them the instructions.

Senator HOGG—So you are saying Commercial Nominees ignored your instructions?

Mr Bell—Yes. In fact, if I just take one of the acknowledgments that Commercial Nominees sent to me when they received one of the rollovers, it basically says, ‘We will invest the remainder of the rollover’—that is after taking out a small balance in cash to meet various expenses—’as per investment instructions received.’

Senator HOGG—Could you send us a copy of that, please?

Mr Bell—I can do, yes.

Senator HOGG—And the instructions as well—that would be interesting for our records.

Mr Bell—All right.

Senator HOGG—Thanks very much.

Mr Bell—That should just go to the secretariat?

Senator HOGG—Yes.

Mr Bell—All right.

CHAIR—Again, thank you very much, Mr Bell, for presenting to us via the telephone line this morning.

Mr Bell—That is my pleasure and thank you for the opportunity.

[11.14 a.m.]

KAAN, Mrs Jennifer Ann (Private capacity)

KAAN, Mr Richard (Private capacity)

CHAIR—Thank you, Mr and Mrs Kaan, for communicating with the committee regarding an earlier date. You have no objection to being on television?

Mrs Kaan—No.

CHAIR—In addition to this program, it is also being televised through the system, which can be picked up anywhere by other media outlets as well. As a matter of courtesy, we would like to make sure people are happy with that. If there is anything that you would like to take in camera, we will consider that, but we would prefer not to have to take in camera evidence because I think your problems are fairly straightforward. I invite you to make a brief opening statement and then we will go to open questioning. Do you wish to make any comments regarding the capacity in which you appear?

Mr Kaan—I am here as a member of the Kaan family superannuation fund, of which we are both members.

Senator HOGG—Are there any other members of the family who are in the fund as well?

Mr Kaan—There are not.

Senator HOGG—So you are the two sole members?

Mr Kaan—Yes.

Senator HOGG—Thank you.

Mr Kaan—I would like to say that I appreciate this opportunity. I would also like to put on record Senator Watson's alacrity in response to telephone calls from total strangers on this subject. It was through that contact that I became aware of this committee's activity. Not to go over old ground, on the advice of Saxby Bridge we transferred our super fund from under the trusteeship of our company into a DIY environment. That was considered at the end of 1999 and at the start of 2000 because of the changing, and perhaps onerous, duties involved in doing it oneself. Reflecting back on that, one has some different conclusions now, but we went through with it. We transferred considerable amounts of assets in the form of scrip and investments and some cash, with written instructions direct from me to CNAL in July—when the money was received by the CNAL—about what to do with the cash portion of the transfer. Those instructions were acknowledged and, happily, carried out. Further investments took place, following my instructions and made by CNAL. Early last year, I asked for proof of those investments having been made and, unless they are forgeries, I hold copies of certificates from very well-known international fund managers.

CHAIR—In your name?

Mr Kaan—No, in the name of CNAL. They are pooled, but we have checked with the providers and those funds were bought. They are in a pool.

Senator HOGG—So the non-cash assets, if I may interrupt, at this stage seem to be safe?

Mr Kaan—Yes, they appear to be safe. There remains \$300,000 in cash, which is the amount that appears to be at risk. That was transferred, on my instruction, into what they call their cash management fund.

Senator HOGG—Did you know that it was going into a cash management fund?

Mr Kaan—I did.

Senator HOGG—Did you know the title of the cash management fund?

Mr Kaan—The Enhanced Cash Management Fund. I had some promotional material passed to me, I read all the material that came from Commercial Nominees and I took some considerable comfort from the fact that it was APRA approved. I am not a lawyer or a financier by profession, but I knew enough about those aspects to draw some comfort. The cash management fund was described in those words, and I had a reasonable view, having invested over many years in different cash management funds, as to how that would be operating and the way in which it worked.

I was informed of the problem—this is a story that you have heard many times, I imagine—and I took my matter directly to the then directors in the December time frame. I put them on notice and said that I held them personally liable. I put that in writing, working through my solicitor, which involved considerable expense.

Senator HOGG—What sort of expense?

Mr Kaan—So far, I am aware of only the hours and the matter is not finished, but it involves me in legal expense, of course.

Senator HOGG—Could you give us some sort of idea because we have a number of disparate sources who are involved and each case is different, spending quite substantial amounts of money. I think Mr Crosby said that he had spent in the order of \$20,000 thus far. I did not ask Mr Bell the same question. We need to get some sort of proportion of—

Mr Kaan—My estimate of the moment would be about \$5,000 for a solicitor and extra accounting work. I asked for and received an independent audit of the current family superannuation fund in CNAL.

CHAIR—Audited by whom?

Mr Kaan—A separate audit undertaken by an independent auditor. They agreed to that in January and we have the results of that.

CHAIR—And that showed no impairment?

Mr Kaan—That showed no impairment of the assets that were in third party paper, but the cash was not audited. There are two parts, as you would well appreciate, Senators. I draw some comfort from the fact that the non-cash portions of the fund are, as it were, sitting there. Certainly, since some of them are scrips and there has been action on some of the scrips with decisions about sales, purchase or options, all that traffic appears to be unimpaired.

CHAIR—And you have actually received payments as unit entitlements and distributions quarterly or each half year, have you?

Mr Kaan—Yes, we have received those, and they indicate the performance of the funds that CNAL were originally instructed to purchase. The additional units that have come through as part of the earnings have been reflected in the audit statement.

CHAIR—So the distributions made by the reputable superannuation trusts have been made to the pool managed by CNAL and CNAL have paid you reasonable distributions, have they?

Mr Kaan—CNAL have credited to me from their pool in which other people in CNAL would be holders apparently reasonable earnings, consistent with my review, independently obtained, of the movement of the prices.

CHAIR—They have paid these distributions from the pool. Where did they pay that money to?

Mr Kaan—I have not followed that trail.

CHAIR—It has not gone into your pockets?

Mr Kaan—No. Those assets are still in CNAL.

CHAIR—But the cash that you have allegedly receive or has been credited, you do not know which account it has been credit to?

Mr Kaan—There may be a misunderstanding here. Those funds credit you extra units, not cash.

CHAIR—You have elected to take additional units?

Mr Kaan—Absolutely, yes.

Senator HOGG—There is no cash coming back to the Kaans, as I understand it.

Mr Kaan—And the units have gone up.

CHAIR—Been enhanced.

Mr Kaan—Been enhanced, precisely. I know from the newspaper that the price has gone up as well. So all appears to be calm on that front.

CHAIR—But you do not know of people in similar circumstances who did not elect to have extra units taken out and re-invested but have taken it in cash and used it as living expenses, whether that has been paid?

Mr Kaan—I have no notion of that because that is not the situation in which we find ourselves at the minute, although if I had a pension, or something, yes I would be in that situation.

CHAIR—Thank you. That is what I was trying to determine.

Senator HOGG—I note that the correspondence of 20 December that you wrote to CNAL you also copied to APRA and ASIC. Did that elicit any response or reaction from either APRA or ASIC? Did you expect a response out of either of those organisations as a result of your correspondence? If not, why did you send it to them?

Mr Kaan—I will answer the last question first. I had made contact with Mr Burgess on the advice of another similarly injured party, and he requested that I send copies to him. He was suitably cagey in what he told me, which at that stage I put down to that being the way they operate. Since then I have become quite disenchanted by the opacity down there. I copied them everything. There was no acknowledgment by phone—he knew my phone number—or in writing from anyone at ASIC of anything I send them. I send them four tranches of correspondence.

Senator HOGG—What about APRA?

Mr Kaan—I am sorry, I meant APRA. I made a personal representation to ASIC, to one of the commissioners whom I have known over the years, in order, candidly, to get the thing on the agenda. At that point in the Christmas break there were no signs of life down there, as indeed it proved, because this person was away. Eventually I had a meeting with ASIC, and that is recorded in my background. I formed the view that there was no sense of haste, no sense of urgency. There were some quite warm PR words, but I am a businessman and it is important to act. I was struck by a lack of action, a lack of desire to convey action to me. Ms Redfern knew very well that I was an acquaintance of one of the commissioners and so I assume that what Ms Redfern gave me was the very best answer she could give me. I do not know what constraints she was working under, but I regard it as unsatisfactory. Similarly I regard as unsatisfactory my entire correspondence with Minister Hockey, unfortunately. I sent him similar information to what I sent to you, Senator Watson. His office, through a clerk, has acknowledged one piece of correspondence. My conversations with his chef de bureau in Sydney have been less than satisfactory, even pointing out matters of courtesy. The best I have received from them is that this is subject to some legal action, which is trivialising the issue. We need to be responsive to the Australian public on matters of public interest.

Senator HOGG—In your submission, you say at page 2 that APRA had acknowledged receipt of the correspondence on 4 January. You go on to say that nothing had been heard from APRA since. That is in bold type, and I presume that is still the situation today.

Mr Kaan—It is.

Senator HOGG—And you say that nothing was ever received from Minister Hockey, but I think you have now clarified that in the sense that you have at least received acknowledgment. But then you say that neither of your previous letters to Minister Hockey has been answered. So you consider that you not have not been given the responses that you think you are entitled to.

Mr Kaan—That is correct.

Senator HOGG—Were you approached in respect of the appointment of PricewaterhouseCoopers as new trustees?

Mr Kaan—No, I was not.

Senator HOGG—Do you think you should have been approached, or that there should have been at least an open and transparent process? You are paying for them, I understand.

Mr Kaan—Yes.

Senator HOGG—Do you know what you are paying for?

Mr Kaan—I did know I was paying for them—

Mrs Kaan—We are paying for them, are we?

CHAIR—That was the statement made this morning. This is a matter that we will be following up with the regulators in May when they appear before us.

Mr Kaan—I think the reality for us at the time was that we did not have any part in the appointment of the auditor—

Senator HOGG—No, not the auditor—they are not the auditor.

Mr Kaan—The trustee?

Senator HOGG—As the replacement trustee.

Mr Kaan—Frankly, given the slowness of APRA's original speed of dealing with this, I was quite relieved to read that they had now relieved CNAL of their permission to operate as trustee and had put someone else in. I saw that as positive action.

Senator HOGG—Would you be comforted that, with the trustee that was appointed, two directors of the company went overseas for a fortnight after their appointment? That is what we

have been told—we have yet to establish if that is completely correct—and that that company is having difficulty in finding the appropriate staff to deal with the superannuation funds. Does that give you any confidence either in the trustee that has been appointed without your knowledge or in APRA per se?

Mr Kaan—That is new information, Senator. My knowledge of these emergency actions sees things move a bit faster than that. It is not consistent with what I would be expecting, if that were to be the case. Let me say, however, that my solicitor has been dealing with a partner at Oak Breeze and has found him to be responsive on the telephone and ready to look at our particular fund because it is relatively straightforward and most of it, apart from the cash, is held in negotiable third-party paper. My lawyer has reported to me a helpful and progressive level of feedback.

Senator HOGG—That is very promising indeed.

Mr Kaan—I received a call from the same partner and, from that conversation about a week ago, I would echo that from that.

Senator HOGG—All right.

CHAIR—I refer to your submission, particularly your contacts with Ms Jan Redfern of ASIC. You state towards the bottom of page 2:

In reply to questions about proposed actions, she stated that CNAL's directors were in ASIC's sights for breaches of trust, and Saxby Bridge would be for negligent advice. There was no comment as to my concern about the energy and speed needed to produce a good outcome.

Why do you think ASIC are concerned about Saxby Bridge, given the evidence they have given and everybody else has given to us today?

Mr Kaan—I cannot form any sensible view with the information that Saxby Bridge provided to us today. This meeting with ASIC was in January. At the time she elected to tell me what she elected to tell me. I was there in order to move the matter forward, to press my case to see some action.

CHAIR—Were you surprised when you heard that comment?

Mr Kaan—I had formed the view that something was going on with the directors at CNAL and I was not surprised to hear ASIC state that they had too and they were having a serious deep look at it. As to the role of the financial adviser, it was she who stated that there was a possibility the advice was negligent.

Senator HOGG—Do you still deal with Saxby Bridge?

Mr Kaan—No.

Senator HOGG—You have ceased any arrangement that you might have had with that organisation?

Mr Kaan—I have.

CHAIR—Can you share with us the reason?

Mr Kaan—There is a chain, starting from my seeking advice to having that advice provided to me, which includes going to CNAL. I would never have heard of CNAL had it not been for Saxby Bridge—that is a statement of fact. We both feel sufficiently nervous and, at this point of time, lacking in confidence to wish at this stage to continue an advisory relationship of that nature.

Senator HOGG—Do you have any financial advisers at all now?

Mr Kaan—Yes, I do.

Senator HOGG—Part of the problem may well be that other financial advisers could have steered you in exactly the same direction.

Mr Kaan—That is entirely possible; it is hypothetical. I have no evidence for that at all—I just do not know.

Senator HOGG—I think we have had evidence already this morning that a large number of organisations had associations with CNAL—quite substantial organisations, I must admit.

CHAIR—Obviously, a number of people have been referred to adversely in your evidence, and naturally the committee gives everybody the right to state the position and contradict it if need be or to put their position. But you have given us a very fair and reasonable account of your expectations, and we appreciate your coming before the committee today and the manner in which you have presented your evidence. Again, quite obviously your communications have not been satisfactorily dealt with, and that is a matter that this committee will follow up.

Mr Kaan—I think the communications need to be put in context, and they are a large irritant. The core issue, though, is that a trustee, allegedly approved by the regulator, has acted in this way—and I do not lose sight of that. Everything else is a matter of trying to get things fixed, trying to move ahead, trying to get fair dealings and trying to evoke the protection of the law. I have scanned the SI(S) Act, and I want to put on record my call for the act, which appears to be sound and appropriate, to be administered properly. In its later clauses, there are provisions which can be evoked in circumstances where a trustee or an approved body goes off the rails.

Senator HOGG—Given that you had a belief in the act, in the prudential supervision by APRA, do you believe that you should now be forced to bear the costs in trying to defend your own position when that faith was placed in the system in the first instance? This is not necessarily a case of fraud or anything else; I am just looking at the fact that you had faith in this as an APRA approved trustee and that therefore you should not have to go through the hoops that you are going through, that there should be some other mechanism for your defence.

Mr Kaan—As I say in my submission, it is our reasonable expectation that we are entitled to believe that acts of parliament are properly administered and properly policed and that breaches

are quickly acted upon. It is not appropriate and it is very unfair for citizens to be asked to personally bear the cost of administering the pursuit of reasonable justice.

CHAIR—Thank you very much for your comments about the SI(S) Act per se. When that first came in, this committee had a very significant role in analysing, scrutinising and monitoring it, and it called expert witnesses independently of the government to ensure its coverage. That is why we are particularly interested in this inquiry at the present time in relation to the administration of the act, to make sure that there are no legislative weaknesses. APRA and ASIC have indicated that there are obviously some problems as far as they are concerned—loopholes. They are issues that we have to pick up very quickly. My concern is why those problems were not communicated to the minister and to the government at an earlier date so that legislative action could have been taken. This committee could have had, again, some oversight in terms of picking these issues up. We do sympathise with you and everybody else in the difficult and embarrassing predicaments that you find yourselves in—in the very fact that you have had to come to this committee today. Not all people who have made such losses wish to do that, so we thank you. It is only through people such as you who will engage with committees that we are able to get good solutions.

Mrs Kaan—It is, as you said just now, a very unusual thing to be here. It is like a nightmare. I never in my wildest dreams ever thought I would be doing this sort of thing. Richard and I are very conservative people. We invest very carefully. As he came to the end of his working life as a full-time employee last year, we were very cautious about what we did. As he makes mention, he has a congenital cardiac abnormality, so the decision to do something very safe with our money was a particularly careful and thought-through one. My great fear at the moment, to be perfectly honest, is that everyone, from the government and the approving agents to the financial advisers—everyone—will try to pass the buck, that everyone will wash their hands as fast as they can. I really wonder whether we will get sight of any of that money—let alone half of it; as you say, 20c in the dollar—because I have a great fear that people will be washing their hands as fast as they can to get away from having to recompense us.

As I think I heard earlier, from the government's point of view it is very important that the superannuation industry is seen by the public to be both important and well policed. The other issue is that, unless firm action is taken on something like this now, the public will lose confidence. I personally am struggling to have confidence. If those people who are looking after money on behalf of superannuants see that it does not really matter if you lose a bit here and there, that no-one is really going to do too much about it, then where do we go? Where does the public generally see themselves, as it is now mandatory to provide superannuation? It is very important that firm action is taken on an issue like this and quickly so that people's confidence can be re-established.

Senator HOGG—If being here today was beyond your wildest dream, we were pleased to have you here and bring your dream to reality. I know it is not a dream you want to have—

Mrs Kaan—No, it is a very bad one.

Senator HOGG—It is a bad dream, but it is important that people such as you have the opportunity to express those views here so that they are on the public record.

Mrs Kaan—I do thank you for making it public. I think you asked the previous person if it was important that such meetings occur between the public and the parliament, and it is. It is extremely important. It is very helpful to us to be able to do this.

CHAIR—I think this is one of the safeguards of democracy that the Senate has provided, that people have this opportunity through the committee system.

Mrs Kaan—Absolutely.

CHAIR—The committee system forms an important part of the Senate work. Thank you very much.

[11.43 a.m.]

MARSHALL, Mrs Valda Therese (Private capacity)

Senator HOGG—Just before we start, I should put on the record that, after a couple of witnesses have been before the committee, I have asked them to provide further evidence to the committee which they will do in writing. In the case of Mr Dally from Saxby Bridge, I asked if he could give us an indication of how much his personal superannuation fund has at risk. He indicated that he does not have an exact figure on that, but he will endeavour to find one in due course. I asked Mr Crosby about the level of fees that he has paid for financial advice and he gave me a figure scribbled on a piece of paper, but I would ask him to give it to us formally in writing. That would help the committee.

CHAIR—At the same time, we do wish to respect the privacy of individuals so, if they prefer amounts to be excluded, do not feel obligated to disclose all the details if you would prefer that they were not on the public record. I welcome you, Mrs Marshall, and invite you to make an opening statement. Your statements and your submission are all protected by parliamentary privilege.

Mrs Marshall—I represent my husband, Peter, for the P.R. and V.T. Marshall Family Superannuation Fund. I made a submission but I would like to give you a little bit of background. My husband, Peter, retired in July 2000 due to ill health after 35 years with the South Australian Police Force. I have been working for 17 years in the banking industry, albeit in the customer service area, but I am very well aware of disclosure rules, particularly with UCCC, the Banking Ombudsman, et cetera. I do not have any qualifications or in-depth knowledge, in technical terms, of superannuation or financial advice.

I guess the submission details our relationship from the beginning with CNA, our background, when we knew that all was not right, what we attempted to do, how we actually feel, a summary of what we would like resolved and correspondence. It is quite weighty because we have tried to contact CNA, ASIC, APRA and Senator Watson. I have to disagree with Mr Kaan in his dealings with Oakbreeze because ours have been a little different, and I will go through that.

We had done extensive research and reading on financial advice and superannuation issues prior to Peter's retirement and the comforting thing was the regulatory bodies of APRA and ASIC, and that was one of the decisions that caused us to proceed with the key feature statement. There is a slight error in the submission. Where I have 30 July for the key feature statement, it should be 3 July.

Senator HOGG—Excuse me, I cannot find that.

Mrs Marshall—It is about the second paragraph down where I have '5 July 2000 we completed details of our super fund'. The last paragraph states:

What has occurred to us has been both a disclosure issue and complete breach of trust by CNAL.

I will not read it all, but I will read a few things that I think are relevant. We state that:

CNAL breached their duty of care to us, our funds were deposited post the event and with the issues already known to ASIC/APRA. No one informed our Financial Adviser of this.

He would not have advised that we went through CNAL if that was the situation. The last paragraph on that page states:

ASIC repeatedly stated that APRA is the primary Regulator of trustee duties and on two occasions—

it was recommended that we seek legal advice. The paragraph at the top of the next page states why we have not been able to pursue that means. The second paragraph states that:

In any case we have the right to expect that the regulators to whom our Fund has always had to pay various compulsory fees etc for regulation and ‘protection’, would now be acting on our behalf—not merely suggesting that we ought to engage still more paid help from outside to solve the problem.

After several conversations with APRA and forwarding copies of everything that we had sent to ASIC, we received a letter stating that the enhanced cash management trust is a unit trust, not an APRA regulated entity. That confused us even more. The current situation is that on numerous occasions we have attempted to contact CNA, and Mr Ling has not replied to our letters dated 16 January, 10 February or 11 March, yet his original letter of correspondence stated that he would send us monthly reports. We have not received anything.

It is further complicated by Ferrier Hodgson’s initial correspondence to us which incorrectly stated that our fund was a unit holder. We had to go back to them and state that we believed it was not a unit holder, and they eventually sent us a letter stating, ‘No, it’s not.’ The correspondence is there for you to read. The confusion then went on with the 14 March letter from Oakbreeze Pty Ltd. We were confused by this letter. In discussions with our financial adviser, we discovered that Oakbreeze had sent us the wrong letter. It had sent him copies of five letters, and we did not get our correct letter. Our financial adviser sent two faxes—the dates are there—and he also sent an express post letter to them, but he has not heard a word since. Our experience, because we do not have a lawyer, has not been the best.

Senator HOGG—That is from Oakbreeze, is it?

Mrs Marshall—Yes, it is.

Senator HOGG—You have sent correspondence?

Mrs Marshall—Two faxes were sent by our financial adviser, because they had contacted him, stating, ‘Your clients will get any one of the five attached letters.’ We received a letter—my husband and I were confused—and we contacted Mr Trimmer. We read out the letter to him and gave him a copy, and he said, ‘That letter is not applicable to your case. I will speak to Oakbreeze and get them to send you the correct one.’ We have not received it and no-one has replied to Mr Trimmer’s calls.

Senator HOGG—Nowhere can I see that you nominate your financial adviser. I am not asking you to divulge the name unless you want to.

Mrs Marshall—In what way?

Senator HOGG—In your submission you refer to your financial adviser, but I do not see the name of your financial adviser.

Mrs Marshall—It is on page 4 and on other pages. It is also in our key features statement that I have attached.

Senator HOGG—I am sorry; I was trying to establish whether you were using Saxby Bridge.

Mrs Marshall—No, it was Mr Jeff Trimmer of Ausfin.

Senator HOGG—That is fine. I could not catch up with that.

Mrs Marshall—The last paragraph of our submission states:

Meanwhile both ASIC/APRA did nothing since November 1999 to prevent people placing funds with CNAL.

The words ‘until late 2001’ should be added there.

In summary, one thing that has affected us which has been a bit different—the Chair spoke earlier about it—is that, when we set up as members, we authorised a monthly allocated pension. We received three payments. October was the last one. I started to make the phone calls because we have not received anything since. Our monthly allocated pension has not been received. The last payment was in October.

CHAIR—You have been given no indication as to when your pension payments will be resumed?

Mrs Marshall—No, none at all. We have specifically asked in the letters, and they are there as well.

Senator HOGG—How much of your resources are tied up in the cash?

Mrs Marshall—In the enhanced cash management fund?

Senator HOGG—Percentage-wise, not in dollar terms.

Mrs Marshall—To us it is a lot, but to other people here it may be small. It is between \$11,000 and \$15,000.

Senator HOGG—In the cash—

Mrs Marshall—Yes.

Senator HOGG—And you would have other assets.

Mrs Marshall—In total, \$116,000. Working in the financial industry, I am well aware of what a cash management trust is. I stated what our current interest rates are and so on. We have not been able to resolve whether the funds that we put into it have been put into our selected investments or whether they have been totally lost in this enhanced cash management fund, because that is where our original cheques went.

Senator HOGG—Did you know that the original cheques were going there?

Mrs Marshall—I attached a diagram, if that can help, because we do not know; I am only assuming.

Senator HOGG—I am sorry, we have that document; it is part of what you have tabled today.

Mrs Marshall—It is in the original ones.

Senator HOGG—I did not have it in the original ones.

Mrs Marshall—It is because it is a document, I am sorry. The cheques went into this holding account. CNA Ltd—

Senator HOGG—What I am trying to get at is: did you have a specific expectation, given the key feature statement, as to where your money was actually going?

Mrs Marshall—Where it was originally going to go?

Senator HOGG—Yes.

Mrs Marshall—As I understand it, it was going to go into the cash management trust and then disbursed. They said that the remainder, what was left in there, was to be used for was a compulsory thing. They stated that cash—five to 10 per cent—in line with CNALs requirement, as shown, had to remain after their disbursement to cover liquidity for taxes, fees and insurance. That is in our key feature statement.

CHAIR—So you invested the money. Did they take very long to make those investments out of the cash management trust?

Mrs Marshall—The letters are attached. I thought they did. Because of the way we have to work and receipt customers and everything else, I thought it did. Mr Trimmer had to chase up the payment for the first month that we were expecting the allocated pension. It eventually went in.

CHAIR—Was that in July?

Mrs Marshall—The first payment was due in August. It went in on time the second time. I think Mr Trimmer had to chase up the third one as well. Since then we have not received anything.

CHAIR—Apart from your investment in the allocated pension, have you got any other investments with CNAL?

Mrs Marshall—This is where it gets a bit technical. Yes, we do have our superannuation fund with a share portfolio plus the enhanced cash management fund.

CHAIR—Some of the witnesses indicated today that they believe that is relatively secure, that they have received advice—

Mrs Marshall—We do not know. We have no idea.

CHAIR—What is the process? You have investments with CNAL that are invested in a portfolio of shares or pooled superannuation trusts.

Mrs Marshall—Yes.

CHAIR—Have you received any notification about distribution of entitlements?

Mrs Marshall—No.

CHAIR—You have had nothing?

Mrs Marshall—We have had nothing

CHAIR—Other witnesses have received information about where the monies have been invested. Are you aware that any distributions have been credited to any of your accounts anywhere?

Mrs Marshall—No.

CHAIR—When did you make this portfolio investment with CNAL?

Mrs Marshall—July.

Senator HOGG—July last year?

Mrs Marshall—July 2000.

CHAIR—So there is the possibility that the full amount could well be in the enhanced cash management trust—

Mrs Marshall—Exactly.

CHAIR—which was to be dissipated very quickly, of which you would be entitled to something like only 20 cents, or even less once the liquidators and others get their share of it?

Mrs Marshall—Yes.

Senator HOGG—Mrs Marshall, so you have no clarification that that has gone into the—

Mrs Marshall—We did receive letters stating different things, but no quarterly report or anything else. We did receive a few letters.

CHAIR—What did they say?

Mrs Marshall—The letters are attached.

Senator HOGG—We are trying to establish whether you have conclusive proof from CNAL that the money that, I presume, would have gone in the first instance into the cash management trust has been disbursed into further investments and, if so, what those further investments are.

Mrs Marshall—We do not have anything comprehensive—only letters dealing with a few of them and not all of the investments selected that state: ‘We hereby confirm the following investment acquisition by the above-named superannuation fund.’ In total it mentions only about a quarter of the money that was invested. We do not have any final documentation stating what has been done with everything.

Senator HOGG—And in spite of the efforts of your financial adviser you cannot find out?

Mrs Marshall—No.

Senator HOGG—So, because you are receiving no quarterly report, you are working on the assumption that the money may well be tied up in the cash management pool?

Mrs Marshall—We just have no idea.

Senator HOGG—You have no idea. It is most unsatisfactory for you; I can understand that.

Mrs Marshall—Definitely.

Senator HOGG—I note that you have had some contact with both APRA and ASIC. For the record, how would you characterise your treatment by APRA in particular?

Mrs Marshall—If I have to be perfectly honest, I would say that ASIC is appalling and I would have to say that at APRA Earl Burgess would at least take phone calls and listen, but we have not got any action and we have not got any assistance at all. That is why I was actually very confused. We were angry and confused and contacted Senator Watson.

Senator HOGG—You used a few strong words here:

Left confused/helpless/angry/frustrated/loss of complete faith in the Australian system caused by ASIC and APRA, that if something had been done much earlier, from November 1999 through to March 2000, when a clearer picture was known, to inform financial advisers in the marketplace of the known problem, then our funds would not have proceeded with CNAL in July 2000.

Mrs Marshall—That is correct. My mother was widowed at 50 and she is now 85, so for 30-odd years I have seen what it is like to be on the Australian pension. As good as it is, it is not good, and we did not want to be in that position. Again like everyone else in this room, we are very conservative. My husband has ill-health. Like everyone else, we have got family issues. So we made what we thought was the best decision at that time. In hindsight, I wish we had taken 100 per cent police pension. Small as that was, we would not be sitting here if we had done that.

Senator HOGG—Have you put any additional funds in the pool other than those invested on 5 July 2000?

Mrs Marshall—No.

Senator HOGG—So it is only those funds, which are substantial for you, and I understand that.

Mrs Marshall—Yes.

Senator HOGG—Were you aware that the trustee of CNAL had changed?

Mrs Marshall—You mean more recently?

Senator HOGG—Yes.

Mrs Marshall—Yes. That was when we originally got the first incorrect letter from Ferrier Hodgson, and the second one was Oak Breeze also informing us but stating things about our situation that were not correct.

Senator HOGG—Were you consulted in any way about the trustees who were appointed?

Mrs Marshall—No.

Senator HOGG—Do you think you should have been consulted?

Mrs Marshall—We would have liked to have been.

Senator HOGG—Do you know the fees that the new trustees are charging?

Mrs Marshall—I guess that was my last point in my letter. I found it quite astounding that, even though the letter that was sent to us was incorrect, the letter from Oak Breeze also states that about the fees and charges. We find it absurd because, if ASIC and APRA had acted in the first instance, we would not be sitting here and we would not need to pay these fees and charges.

Senator HOGG—What are those fees and charges, for the record?

Mrs Marshall—I would have to refer to the letter that is there. I have attached a copy. It does not actually state what they are; it just says that there will be fees and charges. That is the last page, schedule 2, terms and conditions of appointment. It does not state a figure.

Senator HOGG—So you are really in the dark about the whole process.

Mrs Marshall—Exactly.

Senator HOGG—You do not know what the fees and charges are, you do not know what APRA are doing. APRA have been fairly reluctant to give you any information whatsoever. And you do not know the fate of your investment from 7 July 2000.

Mrs Marshall—That is correct.

CHAIR—You also state that CNAL committed a breach of trust in breaking their disclosure rules to us. For the public record, if you would not mind.

Mrs Marshall—Without reading it—

CHAIR—Just as you understand it.

Mrs Marshall—Sure. It is in here. It has to be at arm's length. From what we heard with what happened, it was not at arm's length. I believe there were relatives involved in the situation; plus, simply disclosure rules—why didn't they tell us? They knew that the problem was currently being investigated. Why weren't we told? Why wasn't our financial adviser informed of the situation? Even if they thought that it may end up all right, I believe that they really should have told the investment advisers, and made a public record, that an investigation was in process. We would not have proceeded. We would have gone through other avenues. If we had known that at that stage, we could have taken the 100 per cent police pension. We chose not to; we chose to go two-thirds police pension and one-third with this. Our decisions would have been totally different.

Senator HOGG—Have you engaged a solicitor at all?

Mrs Marshall—We cannot afford to. We are not people of endless financial means.

Senator HOGG—No. This is more for the public record.

Mrs Marshall—No.

Senator HOGG—Are you continuing to pay a fee to your financial adviser to pursue this issue on your behalf?

Mrs Marshall—He has not charged us any fees to pursue this issue.

Senator HOGG—Do you believe that you should receive assistance from APRA or from some 'other source' to assist you in the pursuit of the wrongdoing that you have perceived?

Mrs Marshall—I certainly do, because it was in the key feature statement where I read ‘APRA’. We have had dealings with APRA in my working environment and, as soon as I saw ‘APRA’, the regulatory bodies, I read about them and I went on their web sites prior to doing any of this.

Senator HOGG—Yes, I noticed you visit that.

Mrs Marshall—I felt very comfortable with what we were doing for that reason.

Senator HOGG—So it is because it had that seal of approval by APRA that you were attracted to the investment.

Mrs Marshall—Yes.

Senator HOGG—That is why I am asking that question about whether or not there should be some form of support.

Mrs Marshall—Yes, there should be.

Senator HOGG—If you had gone into some mickey mouse scheme, then it could be said ‘buyer beware’.

Mrs Marshall—We have had friends who have gone into ostrich farms and this and that, and we have said, ‘No.’ We just are not that sort of people. We are very conservative and prudent. We thought we were.

I have taken an annual leave day, which is quite priceless to me in our family situation. That is another cost that I bear, because annual leave days, et cetera, are needed for home environment things. Over this period of time my own sick leave has increased. A lot of this has been left to me, because—

Senator HOGG—So there has been increased stress and pressure upon you?

Mrs Marshall—More so, exactly. My husband is currently on medication anyway, and for the rest of his life he is on this medication for depression and sleeping tablets. You can imagine this has not helped him through this either. The visits to doctors, et cetera, have increased for him, so obviously I cannot cope with all of that plus an 85-year-old elderly mother who is in and out of hospital. I am also the carer for my intellectually disabled sister. Our plan was that Peter would retire then, and then I would retire in October, when I am aged 55. We are having to seriously rethink all of that but, of course, I do have the home situation as well. That is why, even though it is small, that allocated monthly pension was part of that planning. We planned this out very clearly, and all of that now is in jeopardy. We have to rethink things totally.

Senator HOGG—Thank you. I am glad you told us that, because that is the other side to this issue that needs to be seen: people’s mental, physical and home demeanour is being affected by the inaction of APRA. As you have quite rightly said, your problem would not have existed if

APRA had acted swiftly. I think we have heard other evidence to that effect today. Thank you very much for your evidence.

Mrs Marshall—Thank you.

[12.10 p.m.]

GREGG, Mrs Marianne Irene (Private capacity)

CHAIR—Thank you very much for appearing before our committee today. I have heard some of the heart-rending stories. It is important that another South Australian present to us. That is why we have given you the opportunity of coming before us today. Your statements are protected by parliamentary privilege so you can be quite free in about what information you want to tell us. But if there are details of your personal circumstances that you wish not to reveal, we will respect that. You can talk in general terms. It is entirely in your domain what you wish to tell us. But naturally we want you to be as frank and free as possible. We thank you for your preparedness to come before the committee, because it is only by people drawing these matters to our attention that we are able to get to the bottom of these things and try to rectify them and provide a degree of justice under the circumstances. I invite you to make an opening statement, if you wish, or even to comment on some of the other issues that have been raised.

Mrs Gregg—Val Marshall has put it quite well. I am not as well prepared as Val and I am not quite as well versed in these sorts of things as she is. I am a private citizen and, not only that, a private person. So I am going to find this very difficult.

CHAIR—Take your time.

Senator HOGG—If you like, you do have the option for us to go in camera and, in which case, we can clear the room.

Mrs Gregg—No, I will struggle on. Please bear with me.

Senator HOGG—Feel quite relaxed. These hearings are generally warm and relaxed.

Mrs Gregg—I would rather not be here, as has been stated by other people. I will read this firstly: CNAL were appointed as the trustees of our super fund in March 2000 after advice from our financial adviser and a reading of the key features statement. As ordinary tax paying Australians, we have had the most stressful and worrying time since we received notice that CNAL have frozen our cash, which was part of the proceeds from the sale of our home. That was actually my super fund because I did not have one. We were juggling a holiday house and another house, so we have sold one and we are living in one now. This was the product of a lifetime of careful and hard-earned saving.

CHAIR—So you have sold your principal private residence, have you?

Mrs Gregg—We had a holiday home which we have upgraded, so it is not as if we are living in a tent.

CHAIR—And you put all that money into CNAL?

Mrs Gregg—That is correct, every cent. We went through what we thought to be a conservative plan of action to secure our financial future. The money that has gone missing was

to be part of our super fund to keep us independent and able to support us in our retirement. Like Val stated, living on the pension—and I have seen people trying to get by—is great but not that good. We feel what has happened is a gross betrayal of trust. We are very worried about our future and in particular how we can trust a system which allows this sort of thing to happen. The feeling insecurity is overwhelming, so much so that it is impacting on every aspect of daily life. Our health is suffering. We are not sleeping. We have feelings of anxiety and despair about our future. At our stage of life, it will be very difficult to recover from any sort of financial loss, let alone the amount that is involved. We do not have money for lawyers. If APRA and ASIC had alerted the public when they first learned there was a problem with CNAL, we would not be in this stressful situation.

Again, as I say, we are consumed by feelings of despair. It is an enormous thing that has happened to us. We have lost all confidence in the future and we are just saying what is the point of being frugal and saving for our financial security when this sort of thing can occur. We are not gamblers. We have entrusted our money to people. Where are the safeguards? That is basically what we have to say. Our key feature statement says that our money was to be held with Commercial Nominees Australia Ltd in their cash management trust. So I do not know what the ECMT is. They have changed it or they have started calling it the ECMT. But we were told to keep 10 per cent—

Senator HOGG—If I can just stop you there: did the words ‘cash management trust’ imply to you a certain degree of safety and surety—

Mrs Gregg—Yes.

Senator HOGG—than if it had been the cash at bank account or something like that?

Mrs Gregg—Well it was to be cash at bank—

Senator HOGG—Were the words ‘cash at bank’ used in the key feature statement as well?

Mrs Gregg—Yes.

Senator HOGG—One of the problems that we may need to address is the exact terminologies that are being used. It may well be that they bring across to people a certain degree of surety and certainty that is not really implied at all. That is why I am asking.

Mrs Gregg—We are in the same situation. We were asked to keep 10 per cent cash at bank or ECMT or whatever it is they call it, and the rest of our money was to be invested in the securities—

Senator HOGG—That is right, but that was in a trust account. Did the word ‘trust’ lead you to believe that—

Mrs Gregg—Well one would think that you could trust—

Senator HOGG—All right. Apart from the fact that it had the APRA stamp of approval on the fund, even then was there a secondary level of trust or faith on your part that because it was called a ‘cash management trust account’ that the money itself was safe?

Mrs Gregg—Not really. I am a believer in tangible assets rather than pieces of paper, so not really. Like Val and the other people, we really do not know for sure whether the money that has been invested in the investments they say we have got it in actually do exist.

CHAIR—But you have had no confirmation from them that those investments have been made?

Mrs Gregg—No. My husband is still working, and we have not really had any money from CNAL at all. We just put our money in. I stopped working six weeks ago, and my husband was going to wind down and was going to retire some time within the next 12 months. That is certainly up in the air now, which again is impacting on his health in particular. He is a shift worker and has been for the last 32 years. It is getting to the stage where it is—

Senator HOGG—If I can turn to your submission for some clarification, you state:

On the Quarterly Report as at 30 June 2000, CNA Statement of Financial Position to us lists “Cash at Bank” which amounts to approximately \$25000, 14% of Total Assets, this money has gone missing.

Where is the rest of your investment? Is that the same as Mrs Marshall’s?

Mrs Gregg—Yes.

Senator HOGG—You have never received any evidence that it has been invested in another investment mechanism, whether it be Credit Suisse or something else?

Mrs Gregg—We have been given a list of where it has supposedly gone.

CHAIR—Where has it supposedly gone—just roughly for the *Hansard* record?

Mrs Gregg—I am trying to find it. Into investments like—

Senator HOGG—Could you give us some idea?

CHAIR—Like Credit Suisse or Zurich or BT or—?

Mrs Gregg—Something like that, yes, similar to that. I am just trying to find our list; I have got it somewhere. I am not very good at—

Senator HOGG—Just take your time.

Mrs Gregg—This is a statement of September. We have not had any statements; this is a bill for administration costs.

Senator HOGG—So you have the bill for administration, but you do not have the statement of where your investments are?

Mrs Gregg—Merrill Lynch, Vanguard, BT International.

CHAIR—All sound investments.

Senator HOGG—They sound, on the surface, reasonably solid.

CHAIR—Yes. What was the date of that statement?

Mrs Gregg—27 September 2000.

Senator HOGG—Have you received any statement further from that?

Mrs Gregg—No.

Senator HOGG—Have you tried to see, through your financial adviser, confirmation that those investments are safe?

Mrs Gregg—We have, but that is the sort of thing we have received.

Senator HOGG—How often did they promise you a statement?

Mrs Gregg—When we received the letter from CNA, the last one—I really should not be here.

Senator HOGG—Take it easy. If you do not want to answer the question, you should feel quite relaxed.

CHAIR—So in a nutshell, you feel that they took a very long time before they invested your money.

Mrs Gregg—This is the only statement we have, 27 February.

Senator HOGG—Has your financial adviser approached APRA?

Mrs Gregg—He has done all the things. He has been in touch with both regulatory bodies.

Senator HOGG—What sort of response has your financial adviser received?

Mrs Gregg—As I said, I really should not be here because I was not dealing with it; my husband has been.

Senator HOGG—How would you characterise it?

Mrs Gregg—Unsatisfactory, as the other people have said.

Senator HOGG—We understand why your husband cannot be here. I am just trying to get a broad characterisation. We will accept that.

Mrs Gregg—Nothing has been happening. The timing of the letter from CNA: the whole time over Christmas, as someone else said, the people who have taken over went on holidays or on leave and we could not contact anybody. No-one returned our phone calls when we made them. The only person who really has been in contact with us and taken the trouble to follow anything up for us is Senator Watson.

Senator HOGG—That is good.

Mrs Gregg—It has had an impact on our lives. I do not want to go on the pension. This is my sum total of a lifetime of working. People who are in the work force at this time are expected to put their money into superannuation with a promise that they will be secure in their future, so that they can be independent and not have to be a burden on taxpayers. You want to just get on with your life and not have to worry about whether you can afford health insurance, whether you have to go on a hospital waiting list or whether you can take your grandchildren, if you have any, to the zoo or whatever. You want to be able to afford to do these things, not worry where the last penny is coming from. I have been there. I do not want to do that again.

Senator HOGG—Are you aware of any other people who are in the same situation? Do you feel isolated?

Mrs Gregg—Up until only recently, I did not realise that Val was in the same situation.

Senator HOGG—Has your feeling of isolation in this added to your worries?

Mrs Gregg—We have no-one to talk to, that is correct. Whoever you get in contact with says, 'Ring so-and-so,' then they tell you to go to someone else and nothing really happens at the end of the day.

Senator HOGG—So the isolation is added to your frustration.

Mrs Gregg—Yes, very much so. No-one knows where to start. No-one knows where it started and where the buck stops.

Senator HOGG—That is part of the problem.

CHAIR—I only wish more people could have been here to hear some of the evidence we have had this morning, particularly the regulators because body language contains more than just what they can read—they do not get the full picture. I can assure you, we will be wanting some real accountability.

Mrs Gregg—We did a little bit of homework. This is our first toe into the water, and you can only go by the advice people give you and they do that to the best of their ability. There is always someone who is not quite giving the true picture. You can only follow people's advice.

Our expertise is somewhere else, so you pay someone. If you want surgery you go to a surgeon; if you want financial advice you go to someone who supposedly knows about that.

Senator HOGG—But the real problem in this instance was that it was APRA approved. If it had not been APRA approved, people may well have had a different response.

CHAIR—And the advisers would have had a different response to it.

Senator HOGG—It is a regulatory regime that is now in place and people's innate belief is that, because the regulatory regime has been put in place by legislation by the government, that carries with it a degree of infallibility that you might not otherwise expect. I think that that is the real problem.

Mrs Gregg—Yes, there was supposed to have been a safeguard.

Senator HOGG—The second problem, of course, is the seemingly slow response that has been made by APRA in responding to the difficulties.

Mrs Gregg—According to something we have here in *Hansard*, they have known about it since 1999.

Senator HOGG—Are there any other members of the fund besides yourself and your husband?

Mrs Gregg—No, it is just my husband and myself—just the two of us.

CHAIR—Thank you very much for giving us your evidence. It is very important. I hope the formalities of the event have not caused you too much stress.

Mrs Gregg—Not at all.

Senator HOGG—We have appreciated your attendance.

CHAIR—Thank you very much. We mentioned that people or organisations that have been adversely affected by evidence, or adversely referred to in the evidence, have the opportunity of putting their case, either in writing or before the committee. I have a statement by a representative of Minister Hockey, which I understand is an interim response. It reads:

At the recommendation of APRA, the Minister removed CNA as trustees of funds at the earliest time for the benefit of protecting the beneficiaries of the super funds. Similarly, at the recommendation of APRA, in the acting capacity of Minister Hockey, Senator Kemp revoked CNA's approved trustee status.

I would expect there will be further statements made by people who are adversely affected. On behalf of the committee, I thank all witnesses who have given evidence for their participation. I wish you a safe return journey to your home and a more satisfactory outcome than appears at the present time.

Committee adjourned at 12.28 p.m.

