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JOINT COMMITTEE ON CORPORATIONS AND SECURITIES

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JOINT COMMITTEE ON CORPORATIONS AND SECURITIES

Monday, 25 June 2001

Members: Senator Chapman (*Chairman*), Senators Conroy, Cooney, Gibson and Murray and Ms Julie Bishop, Mr Cameron, Mr Rudd, Mr Sercombe and Dr Southcott

Senators and members in attendance: Senators Chapman, Conroy, Gibson and Murray

Terms of reference for the inquiry:

Financial Services Reform Bill 2001

WITNESSES

Committee met at 5.33 p.m.

CHAIRMAN—Today the parliamentary Joint Statutory Committee on Corporations and Securities conducts its fourth public hearing into the provisions of the Financial Services Reform Bill 2001. The committee decided to inquire into and report on the provisions of the bill, which was introduced into the Commonwealth parliament on Thursday, 5 April. The committee sought submissions by 20 April but, because we desire as many people as possible to have an opportunity to comment on the bill, the committee resolved to receive submissions up to 7 May 2001, and late submissions are still being accepted. The committee agreed in April to release all submissions received on the inquiry. Submissions will be available from the Parliament House web site or, alternatively, the secretariat can send a hard copy to those who wish to obtain them.

Before we commence taking evidence, I reinforce for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to evidence provided. Parliamentary privilege refers to the special rights and immunities attached to the parliament or its members and others necessary for the discharge of parliamentary functions without obstruction or fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before the Senate or any of its committees is treated as a breach of privilege. Unless the committee should decide otherwise, this is a public hearing and, as such, all members of the public are welcome to attend.

[5.34 p.m.]

BROOKES, Mr Nicholas Duncan Jeremy, Chief Executive Officer, Corporate Superannuation Association

CERCHE, Mr Mark Nicholas, Chairman, Corporate Superannuation Association

CHAIRMAN—Welcome. We have before us your submission, which we have numbered 60. Are there any amendments or alterations you wish to make to the submission before proceeding?

Mr Cerche—No.

CHAIRMAN—Do you wish to make an opening statement?

Mr Cerche—Yes.

CHAIRMAN—You may proceed and then we will move to questions.

Mr Cerche—Thank you for convening to hear us. I understand we are the only persons before you this evening, and we appreciate the opportunity. I will not be referring to notes because I sat on my multifocal glasses this morning and am severely handicapped.

I am chairman of the Corporate Superannuation Association. We represent 42 members, who have $50 billion of funds under management, and we are pleased and proud to represent 750,000 employed Australians. We provide superannuation arrangements through a not for profit trustee structure and we boast returns second to none in the superannuation industry taken as a whole, with a management expense ratio of at least half that of the publicly offered superannuation products when we achieve as high as approximately $120 million of assets under management.

My association is concerned about this legislation because in its broad terms it seems to apply to the type of financial product we offer, although the description of it is quite different from how we see what we in fact offer. The language of the legislation has to be stretched indeed to cover us, but we are very sure that the intention of the legislature, if it passes this, will be to catch, in one way or another, superannuation fund trustees providing typical, traditional superannuation in this country. If that is the intention of the legislation then we oppose it.

We oppose it because it will bring into a regulatory regime which is clearly designed to be applicable to public offer superannuation products, products which are provided through a mutual, not for profit, member representative trustee structure. This is the way in which superannuation products have typically been delivered in this country. It is a model which has been followed in the United Kingdom and latterly in Hong Kong. And, to my personal knowledge, the People's Republic of China—for what it is worth—is putting in place a third tier structure based very much on our model, to be preferred over the United States model and that which obtains in Chile.

Our regime has, to our knowledge, proved to be prudent, in the sense that there has been no major fund failure of any significance in Australia. We accept that there have been some superannuation funds at the smaller end of the market which have failed because those persons have simply not complied with the law. If they complied with the law, then typically they should not have failed. Our superannuation fund trustees are regulated by the Superannuation Industry (Supervision) Act; they are regulated by APRA, ASIC and to some extent the Taxation Office. All our funds are audited and are subject to the whistleblowing provisions of SIS in respect of that. We see no particular reason why we additionally should be licensed under the Corporations Law. We see that as an unnecessary expense. Depending on how ASIC decides to structure its licensing requirements it can, in fact, drive us out of business, and if there is any capital adequacy requirement then it will drive us out of business because we typically have no capital available to back up the trustee services we provide. To date we have never had a difficulty with capital, because we simply are representatives of members of the fund and we are entitled, usually as of right, to be reimbursed for fund expenses out of the fund to the extent to which we act properly and reasonably and do not violate any of the statutory provisions in the Superannuation Industry (Supervision) Act.

As presently framed, the legislation does not seem to apply to superannuation at all. In fact, technically it probably misses us. That is so because we are not typically receiving member contributions, nor are we issuing member interests to people who provide us with the money, which is the way the legislation seems to be drawn. We receive employer sponsor contributions, which to some extent satisfy, on the one hand, the statutory requirements of the guarantee legislation, but more traditionally the employment contract. In most of our funds, the level of contribution is far in excess of the superannuation guarantee minimum. A typical contribution rate would be 11 per cent but in the older funds it would be closer to 18 per cent on average. So we are talking about a different type of product from the one which this legislation on its face seems to be regulating, and you have to stretch the legislation to catch us.

You catch us, I think, because we 'redeem superannuation interests'. But we do not redeem superannuation interests; we usually pay benefits. So the language is consistent with a publicly offered, unitised investment fund, which we typically are not. We are largely promised benefit funds, increasingly we are having defined contribution divisions added to us—some of us are converting altogether—but largely we are delivering an employer promise to pay X times final average salary on retirement or to pay an account balance. More often than not, we are providing allocated pensions. That is certainly something which is happening more and more often. In those circumstances, as I strictly read the legislation, the person who actually redeems the superannuation seems to be required to be a licensed person. ASIC tell us that, under their public policy proposal, the superannuation fund trustee will not require a licence if they have a licensed person redeeming the units. That is to us an unnecessary complication to our lives and I do not know what impact it adds to the prudential system which we are trying to maintain and keep in place.

We can go on at length criticising the legislation but it is not my purpose. My purpose is to say to you that our members are strongly of the view that the government should not impose—nor, more importantly, should it allow regulators to impose—law which would drive us out of business. If the parliament wants to ban corporate superannuation then it should do it; it should not pass legislation which allows ASIC to do it by its licensing requirements. That is my opening statement, and I would be glad to take questions.

CHAIRMAN—Thanks, Mr Cerche. Although corporate funds are large funds, would you equate your funds to self-managed super funds as being similar in the way they operate, in that they are not operated by an outside manager nor by an outside group making the investment decisions? I do not mean in terms of other aspects, but they are managed internally rather than—

Mr Cerche—No, typically we would use experts for almost all aspects now. We would appoint an administrator to keep the computer programs necessary to keep all the information intact; we would largely outsource the investment function to professional managers, and that is where we bring real value to bear because we can trim the fee. We are doing that quite successfully, and that is one of the real advantages that we offer over the for profit section, because we have an interest in keeping fees down, whereas the for profit section of the industry, be it ever so worthy, has quite the contrary interest. I touched on the point that our management expense ratio is approximately 0.7 per cent in respect of a fund of $120 million plus. The equivalent management expense ratio in a publicly offered fund would be in excess of 1.4 per cent.

Senator GIBSON—You said 0.7 per cent?

Mr Cerche—Yes, 0.7 per cent. That is in our submission. We certainly made that submission to the Productivity Commission.

CHAIRMAN—Do you think you have been drawn into that as an oversight?

Mr Cerche—No, I think it is deliberate. I probably should not say this—

CHAIRMAN—Say what you think. You are protected by parliamentary privilege.

Mr Cerche—It cannot be an error. They have defined people not carrying on business as carrying on business. So they are obviously intending to catch people who are not for profit, or that fiction in the legislation would not have appeared. I do understand the government's desire to ensure that the superannuation industry provides the end benefit. We have an interest in that, as the government does. We can understand that there is a real risk at the smaller end of the corporate market and at the smaller end of the self-managed fund and at the smaller end of the publicly offered products, because there is simply not enough money to make appropriate diversified investments. We do see that, but we recognise the need for diversification. We have funds which run to $6 billion, and although some people call those who run the funds amateur trustees, I can tell you they are highly skilled and trained people. And those who are not highly skilled often bring benefits to the trustee table if the good old gut feel is sometimes missing amongst the more erudite members. It is amazing how you can convince yourself that an investment manager has a reason for poor performance for the last six years, but it does not convince the person who understands a dollar. They say, 'He told us that last time and he told us something else this time. There is something wrong here,' and usually they are right.

Senator GIBSON—Have you raised your concerns with the minister, or with the government at all?

Mr Cerche—Yes, we have. We have attempted to contact Mr Hockey, we have made representations to Senator Kemp and we have discussed the matter with Senator Watson. We had assumed, quite wrongly, that this legislation, because of its impact on superannuation, would come to the Senate Select Committee on Superannuation. It was only recently that we became aware that this committee was dealing with it. That was our own lack of sophistication in this area.

Senator GIBSON—So you have, or have not, had any response from Mr Hockey's office?

Mr Cerche—We have had no response, I think it is fair to say.

Senator GIBSON—Did you write to them? What have you done?

Mr Cerche—We have sent a copy of the submission we made here. We have raised separately with Mr Hockey our concern. He has been present at a meeting of one of our members to discuss the concepts behind this legislation and we raised those concerns with him at that time, but we have had no positive response.

CHAIRMAN—Did you make a submission to the Treasury when they were undertaking their consultation process?

Mr Cerche—No.

CHAIRMAN—Were you asked to?

Mr Cerche—No.

Senator CONROY—Did you know about it?

Mr Cerche—No.

CHAIRMAN—So really this is the first opportunity you have had to air your concerns?

Mr Cerche—If I may be very blunt, for the last three months we have been very concerned about this and we have been trying to make sure, as best we could, that the matter would be aired before a committee of some sort. We obtained knowledge of the meetings in Sydney a couple of weeks ago, I think—the Wednesday before the Monday. We tried to get on the list and failed, but you kindly let us in here today, and we are very grateful for that. We have raised our concerns with all who would listen. Senator Conroy is probably bored with the representations, but they are honestly held. We are concerned. We deliver what we think is a very good product; we deliver it in a model that has checks and balances, relying on experts to guide us in respect of compliance; we largely outsource our investment function; and we have the real ability to drive costs down by making sure that, firstly, the investment management costs are reasonable at the outset, and, secondly, if there is a failure to perform we have no contrary interest—we can terminate that investment manager and move to another one. In our experience, however, most of the publicly offered arrangements are subsidiaries of or are related to the investment management function, and there is simply not the independence of thought and action which makes our product a better one.

CHAIRMAN—Is the real issue the cost of complying with the new regime if you are drawn into it?

Mr Cerche—If capital adequacy is a requirement to hold a licence, we are dead. The regulator has indicated that that will not be so, but I am cynical enough to think that it might start out that way. The regulator's objective in all of this, I think, is to reduce the number of entities to be regulated: it makes their life easier. In a sense, that is true. But it also concentrates risk, and the bigger the defalcation the worse the problem.

Senator CONROY—Mr Macfarlane, the Governor of the Reserve Bank, recently made a number of comments about super. None of the funds that would be in your association would fall into the category that he was defining as unable to be supervised, riskier, more likely to default. Your funds would not fall even close to that sort of category, would they?

Mr Cerche—I would not think so. Our funds have all the right processes in place to effect diversification, minimise risk and protect against adverse movements in currency if we are invested offshore—although that is being reviewed because of the cost and because whichever way you go you pay a fee, for usually no protection in the end. We typically would be very careful and prudent in our investments and we have the weight of money to enable ourselves to be properly invested. The smaller funds simply do not, unless they go wholly into some sort of pooled arrangement, in which event the MER is not reduced because the pooled arrangements are typically professionally run and the rates are what they are.

CHAIRMAN—You say your assets, which I assume are assets in the super funds, are $53 billion, which is 70 per cent of corporate super. Have you got any idea what percentage that represents of total super funds?

Mr Brookes—It is 10 per cent of the whole. There is just under $500 billion in superannuation.

Mr Cerche—There is a big clean-up going on in the number of funds. A corporate fund under $20 million is now no longer, in my opinion, in the best interests of the members of that fund.

Senator CONROY—There are a lot of people who are willing to say that corporate funds are dead, dying, about to go under—they are all going to be outsourced, put into master trusts, industry funds, whatever—and therefore your concerns should not be a worry because you will not be around for much longer. Have you got any response to people who say that?

Mr Cerche—I think that is an overstatement. With the smaller corporate funds, because of the cost of compliance and because of the risk that smallness brings, one would think that there should be a shake-out and a rationalisation at the smaller end. If I were asked to put a figure on it I would say that anything under $20 million as a fund you would be concerned about, and I think that is the area where Mr Macfarlane's comments were directed.

Senator GIBSON—Would there be many of your members in that category?

Mr Cerche—None.

Mr Brookes—Perhaps I could point out there are 2,100 corporate super schemes in Australia, representing $80 million, and we have got just over 40 members—which is under two per cent—representing over 70 per cent of the assets. It shows there is a very long tail, and even APRA refer to that in their submission to the Productivity Commission. There are 1,800 funds with $5 million or less, and that is where the problems are. It is also where the problems are most likely to occur, not at the well-regulated, large end.

CHAIRMAN—Your funds would include all employer sponsored funds, even for small businesses, or not?

Mr Cerche—We do not represent them, because we have a different interest, I think. I am sounding a bit elitist here. We have drawn the line at $80 million.

Senator CONROY—What is the smallest fund you have got?

Mr Cerche—Without wishing to mislead the committee, I was thinking it was $80 million, but I may be wrong. It may be higher than that.

CHAIRMAN—Roughly what size company would that be, say in terms of number of employees?

Mr Cerche—About a thousand. We typically would have many more members than that. That is another criteria for determining whether it is viable to have your own administration system with your own trustee system in place. If there is only a small number of members subject to it, then the efficiency of having it simply is not there.

Senator MURRAY—Explain the advice you give. Do you give advice to individual members of those company schemes, or do you give it to the trustees or the board members who look after those funds?

Mr Cerche—We represent corporate superannuation in the broader sense. That is, we represent the members of corporate superannuation schemes, we represent the trustees of those schemes and we promote actively the interest of corporations in superannuation.

Senator MURRAY—I understand that, but my question was specific because the bill is aimed at the giving of advice. I really want to know in what sense you give advice, because if you do, then obviously the bill becomes interested in you.

Mr Cerche—Under the current law it would be offensive for a superannuation fund trustee or a corporation without a licence to offer investment advice, so we typically do not do that. We offer membership of a superannuation fund which has certain characteristics, which are explained.

Senator MURRAY—To whom are you explaining that—to individuals or to the companies themselves?

Mr Cerche—To the members of the fund.

Senator MURRAY—But you first explain it to the management or the trustees or whoever is representing those members, or do you bypass that and go direct to them?

Mr Cerche—Stepping back: typically our funds were established in the 1940s or before. They were established by multinational corporations or large Australian corporations which decided to establish in those days—

CHAIRMAN—Like the Shell Company or—

Mr Cerche—Yes, a Shell or Rio Tinto or BHP.

Senator CONROY—Not a great example, but yes.

Senator MURRAY—I am conscious of the time and so I do not want to get into the history, although it might be relevant. The bill says that, where an individual is capable of having their investment decision diverted or changed as a result of misleading information or a lack of disclosure of other inferences on the person making that advice, then you have a problem. Consequently they are required to disclose, and there is a whole regimen.

Mr Cerche—The legislation assumes that the individual is making the investment decision and controls it. In our arrangement, that is typically not so.

Senator MURRAY—Who is making the investment decision and controls it? That is the question I am looking at.

Mr Cerche—The company is obliged to make the contribution either under SGC or contract, and the trustee sets the investment characteristics of the fund in accordance with SIS.

Senator MURRAY—Therefore, the advice is by professionals to the trustees?

Mr Cerche—Typically.

Senator MURRAY—So there is no investment advice to the individual member who is making the contribution?

Mr Cerche—No. We often offer investment alternatives—

Senator CONROY—So you guys have got investment choice now, like—

Mr Cerche—Yes, we do. In the defined contribution sections of our funds, or in respect of members' own contributions or members' own moneys, we would say, 'You have an investment choice. You can select between four investment options, and these are the characteristics of those options—your choice.'

Senator MURRAY—Is there ever the possibility within that choice that one of those choices might in fact have a nice little incentive attached to it which would incline the person offering that choice to steer people into that choice?

Mr Cerche—No. We do not pay commissions.

Senator MURRAY—Or receive them?

Mr Cerche—Or receive them.

Senator CONROY—It is generally just that if you have got low risk there is a low return; medium risk, high risk, different returns?

Mr Cerche—They are the characteristics that are usually offered. In answer to your question, Senator Murray: we do not get investment commissions but we often get rebates in respect of death and disability insurance which is placed as a function of our—

Senator MURRAY—But that is not structured in a way which would incline a person to divert choice, is it?

Mr Cerche—No, it is not. We sometimes get a rebate of the investment management fee if we go through a threshold. For example, if we were managing an investment manager properly we would say, 'For the first $50 million, your fee is X; for the next $10 million, it is X minus something,' and so on. So if we go through by either accumulation of investment return or putting more money in, we may receive money back. But that does not incline our members to select a choice; that is just a characteristic of the investment option.

Senator CONROY—It is a negotiation.

Senator MURRAY—So, in summary, your proposition is that there are no circumstances where those who otherwise might be licensed in fact fulfil the criteria of licensing—namely, the income they receive may affect without disclosure the investment choice of the member?

Mr Cerche—That is correct, if I understood you correctly.

Senator CONROY—The rebate reduces the investment administration costs by getting a better deal—

Mr Cerche—Correct.

Senator CONROY—for the members at whole. There is no rebate to the individual trustees in any way?

Mr Cerche—No. We are not for profit. We are often charged the sitting fee, the per diem fee, because of the responsibility and the cost of these trustees working into the night and in their own time. The fund might pay a $500 fee per year or some honorarium but it is not 0.1 per cent of the assets under management.

Senator MURRAY—What does 'not for profit' mean for you? For instance, a partnership may sometimes be regarded as not for profit; they merely distribute—

Mr Cerche—Not in my experience.

Senator MURRAY—That is the point. When I hear, 'Look, there's $50-odd million under management,' and so on and so forth, and somebody says, 'But it's not for profit,' I think, 'Well, somebody is missing out somewhere.' How do the people who manage the business make their money, and how is it recorded? Why do you describe it as 'not for profit'?

Mr Cerche—Our trustee arrangement is not generating any return for us in our capacity as such.

Senator MURRAY—So where do you make your money?

Mr Cerche—We do not; we are honorary. We are not for profit.

Senator MURRAY—You have other businesses?

Mr Cerche—Yes. We are typically elected people.

Senator MURRAY—Who have come from other organisations.

Mr Cerche—No. If we take, for example, the Shell fund that was mentioned. It is an excellent fund—I know; I hear what you say, Senator.

Senator CONROY—There is a chequered history.

Mr Cerche—It has had no chequered history; it has had an interesting history—very lucrative for all those involved, including the members. But there is an election amongst the members of the fund to determine which employees who are members of the fund become directors of the trustee company. They are not paid for that; in the Shell case, they are not paid at all.

Senator MURRAY—In the ordinary way.

Mr Cerche—Other than with their salary as an employee.

Senator MURRAY—Okay.

Mr Cerche—Typically, the company would appoint an equal number to comply with the basic equal representation rules. So that company structure sits on top of the fund—

Senator CONROY—I think you meant to say 'elect'; the company do not appoint the employees.

Mr Cerche—No, appoint their own representatives—sorry if I misled you.

Senator CONROY—The employees elect theirs, though.

Mr Cerche—The employees typically elect theirs; the company does not have a vote, so it appoints its equal number. They sit there without remuneration, or with a per diem but no ad valorem remuneration or no profit motive, administering the people who are actually responsible for running the fund. They are responsible in the sense that it is a matter of statute. But if you take, for example, X fund—let us not call it Shell, let us say X—they would appoint a professional administrator under a contract, and if anything goes wrong the administrator would typically pay.

Senator MURRAY—Let us move on because we do not have much time. The next issue you raised was the issue of capital adequacy. What capital is needed to fulfil this function?

Mr Cerche—None.

Senator MURRAY—Simply because it is an administrative function?

Mr Cerche—Yes.

Senator MURRAY—And therefore capital adequacy is irrelevant?

Mr Cerche—It has no capital and it has never needed it in the past.

Senator MURRAY—It is not relevant; you do not need it.

Mr Cerche—Correct.

Senator MURRAY—So you can literally operate, if it was an entity, on a dollar?

Mr Cerche—Correct—and typically there are two dollars!

Senator MURRAY—You said that there were no situations in which failure had occurred. But I assume failure is almost impossible, because the members would always be left with something even if the investments were bad.

Mr Cerche—There have been failures in superannuation and corporate superannuation in the sense that people have stolen money, which is a breach of the law. Some of them have made horrendous investment decisions and have lost money. A failure, to my mind, occurs when the fund cannot pay the benefits as promised.

Senator CONROY—None of your members have failed, though, have they?

Mr Cerche—No. Not only that, I know of no major mutual fund of the type we are talking about having failed, whether they are members of ours or not.

Senator CONROY—Commercial Nominees is probably the closest.

Mr Cerche—Yes, but that involves a publicly offered, licensed provider, who—subject to court cases—simply did not comply with the rules. It was a publicly offered, licensed provider;

it was not one of ours at all. The real benefit that our model brings is an interest by the members and an effect by the members. The members actually know of the fund, are interested in the fund, follow the fund with interest and follow the performance of the trustees with interest.

Senator MURRAY—So, in summary, you want exemption because you carry out a fiduciary role; you do not do these activities for personal or entity gain?

Mr Cerche—Correct.

Senator MURRAY—You are not able to divert or pervert a member's investment decision as a result of receiving hidden fees, commissions or other forms of remuneration?

Mr Cerche—Correct. That would be illegal. We do not do it, and it would be illegal.

Senator MURRAY—You cannot do it because of the way you are structured. Lastly, you have no need for the normal accoutrements of a for-profit company, simply because you are there in a purely administrative and representative function?

Mr Cerche—Correct.

CHAIRMAN—Does your structure also include the so-called union funds?

Senator CONROY—There are not any union funds; there are industry funds.

Senator MURRAY—Do not get defensive, Stephen; let the Chairman ask his question.

Senator CONROY—I am not.

CHAIRMAN—You say 'industry'; there are funds that are managed by unions, aren't there? They are part of the industry.

Senator CONROY—No. There are industry funds that have equal representation from the employers and the employees.

CHAIRMAN—They are the ones we are talking about.

Senator CONROY—They have the same structure because SIS requires it. Any fund currently under SIS requires equal representation.

CHAIRMAN—That is what I am saying. There are no funds outside of that structure—

Mr Cerche—Yes, there are.

Senator CONROY—But they are unregulated funds.

CHAIRMAN—That are corporate funds.

Mr Cerche—Without wishing to colour the interchange which we have just heard, may I say this: there are two basic divisions within SIS. There is the approved trustee, which is typically a trustee that receives contributions other than in respect of a standard employer-sponsored member—which is doublespeak for 'it is receiving money from the public'. The not-for-profit funds are not approved trustees; they have to meet the basic equal representation requirement. The basic equal representation requirement means that the trustee board must consist of half employer reps and half member reps. The confusion which exists, I think, between you is because, prior to 1987, the industry funds did not comply with the basic equal representation rules. But, since that time, they have complied with the basic equal representation rules or have become approved trustees.

CHAIRMAN—The distinction I was trying to draw was this: you said that these are funds that go back to the 1940s and so on, but then you have funds that have been established since the superannuation guarantee came in—basically they are the same.

Senator CONROY—EPAS, for example, is an industry fund. It is a Queensland fund that has gone belly up. I think Senator Gibson might have dealt with this. EPAS is an industry fund that has gone belly up while having equal representation. The argument there is that the equal representation became a bit dodgy.

CHAIRMAN—This is the one that was before the super committee?

Senator CONROY—Yes, we have had EPAS, the Queensland one, and the recent one is CNAL, which is the Sydney based one.

CHAIRMAN—Basically the funds that you are talking about are of the two types. The funds that have been going for a long time are basically set up for company executives, in a sense, rather than for the broad range of company employees.

Mr Cerche—No, that is not necessarily true. With regard to the fund we have been referring to but will not refer to again, the managing director and the tea lady are in the same fund on the same benefits.

Senator GIBSON—Most large companies would have their funds like that.

Mr Cerche—But the characteristics that make us different from the industry funds is that typically we have an employer supporter who helps meet the costs, helps facilitate it and typically has an investment risk in the fund in some way or another. In the defined benefit side of it, the employer bears the investment risk, hence we have a corporate focus on the fund, whereas industry funds have come out of the union funds, which were receiving the three per cent and latterly the eight per cent.

CHAIRMAN—That was where I was trying to draw the distinction.

Senator GIBSON—They are accumulation funds, whereas a high proportion of what you have are defined benefit funds, although there has been a switch over a time, hasn't there?

Mr Cerche—Yes, there has been a lot of talk about that, but I do not know anybody who has left the defined benefit fund, other than by having a screwdriver applied. Most of them like the defined benefit funds, and this year in particular, with negative rates of return for the first time for a long time, we are actually seeing a swing back to defined benefit funds around the world.

CHAIRMAN—But the older ones and the ones that have come as a result of the superannuation guarantee provisions are both—

Mr Cerche—They are both mutual.

CHAIRMAN—They are both not-for-profit, so they both come under the umbrella you are talking about.

Mr Cerche—Yes. There are industry funds which are brilliantly managed and are exceptional funds. There are some that are not so well managed, but the present regulatory regime applicable to them means that if they are not well run it is the members' fault because they appoint the people. That is one of the things which our model offers to government in the sense that, if something goes wrong with these funds—and, touch wood, it has not and should not—the persons who would bear ultimate responsibility are the electors, because they control it. When you move it out to the for-profit section, you no longer have control over the trustee function, you no longer have control over the costs, and if you decide to move from that provider to another it is usually an individual choice and an expensive one. That model is more appropriate for a discretionary investor and not for the recipient of contracted moneys, which is largely what we are talking about here.

Mr Brookes—I wonder whether it is worth emphasising that none of our funds, none of our members, are public offer by definition. That perhaps just summarises—

Senator CONROY—It is an oxymoron.

Mr Brookes—Indeed.

CHAIRMAN—As there are no further questions, I thank you very much for appearing before the committee and for the evidence you have given us and the answers to our questions. It has been very helpful for the committee's deliberations.

Mr Cerche—We are grateful for the opportunity. Thank you, senators.

Committee adjourned at 6.14 p.m.