Senate Select Committee on Superannuation and Financial Services

Main Inquiry
Reference (a)

Submission No. 113

Submittor: **The McKellar Family Superannuation Fund**
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23 De La Salle Place,
Castle Hill NSW 2154.
8th April 2001.

Senator John Watson,
Parliament House,
Canberra ACT 2600.

Dear Senator Watson,

I am writing in reference to the Hansard Report of the interviews conducted on 30th March 2001 by the Senate Select Committee on Superannuation and Financial Services.

My wife and I, through the McKellar Family Superannuation Fund, have also been adversely affected by the sequence of events which were the subject of these interviews.

As at the time of the "freeze" imposed by Commercial Nominees (CNAL), we had, as part of our Superannuation Fund, approximately $100,000 in the CNAL Enhanced Cash Management Trust. This constituted a significant portion [redacted] of the total assets of our fund. The balance was in managed funds [redacted] and direct shares [redacted] (we are assuming that these non cash assets are valid in accordance with CNAL's reports to us).

change amended by submitter 21/5/01 Bodd

The monies for the managed funds, cash balance and some shares were contributed/transferred by us between January and May 2000. The balance of the shares were placed to the McKellar Family Superannuation Fund by "in specie" transfers.

I am now retired but up until March 2000 was an Internal Auditor by profession. Because of this, I believe I was more inclined than most to make all possible checks before entering into any arrangements regarding the custody of our superannuation.

I was recommended to CNAL by an Authorised Financial Planner of Saxby Bridge. As above, before committing our funds, I checked by telephone with APRA to confirm that CNAL were, as they claimed in their literature, approved as trustees by that government instrumentality. I also checked the validity of Saxby Bridge's licence to act as Financial Planners, together with the adviser's authority to act as their representative.

Having carried out these checks, I went ahead in the belief, falsely as it turned out, that APRA would have vetted the bona fides of CNAL and was there as a "watchdog" to safeguard my interests.

In this context, I then read very closely the Key Features Statement (KFS) provided to me by CNAL as part of the agreement to have them act as Trustees and Administrators for our DIY Superannuation Fund. This KFS clearly states on page 3 that "the cash

component of your fund will be held in the CNAL Cash Management Account" (not Enhanced Cash Management Trust).

While I have been an investor for long enough to accept that investment in equities and managed funds carries a certain degree of risk, I was also under the understanding that my portfolio should include around 20% in cash as a risk free but lower return investment to cushion the effect of volatility in my remaining investments. I believed, as I am sure most investors would, that a cash account meant liquidity and would certainly not include any "entrepreneurial" equity or loan component.

To find out as we did that the underlying assets of this cash component had been invested quite contrary to the minimum risk philosophy defied belief and came as a complete surprise.

The KFS and other initial CNAL agreements also stated that I was to receive regular quarterly reporting on the value of the assets within McKellar Family Superannuation Fund. When this did not occur, I questioned CNAL both directly (Campbell Simpson) and through my financial adviser. I was given all kinds of excuses and promises but no timely quarterly reports. According to my records, the last quarterly report I have is at 30th June 2000.

Part of the complete DIY superannuation fund arrangement involved an annual payment of $300 to APRA as the regulatory body (and supposedly guardian of my assets). Additionally, funds were to be paid through CNAL for annual independent audits of the fund. When the cash component of my fund was frozen, I received a written demand from CNAL for additional liquid funds to make these external payments. As I did not wish to commit any more monies to their "care", I was reluctantly forced to sell some of my equity holdings within the fund (BHP) in order to provide this money. I am not a frequent seller of equities and incurred further losses when these equities rose in price after I had to sell them.

In the case of both the above payments, it appears if I did receive the alleged services, they did not give me the protection which they were designed to do. In other words, as with the CNAL reports, I was paying for something I did not receive!

CNAL's initial written advice to me was that only the cash component of my fund was frozen. However, subsequent events have indicated that I cannot, at this point in time, withdraw *any* form of funds from the superannuation account.

Following discussions with my financial adviser, in response to CNAL's initial letter regarding the cash component freeze, I made a formal written Statement of Claim to CNAL for the return of my funds. This was copied to APRA and ASIC. Both gave me written acknowledgements but no real help. In fact, when I followed up with APRA by telephone, it was suggested to me, [redacted] "I should obtain my own private legal advice". Apart from my understanding that protection of investors' assets is APRA's raison d'etre, how is it expected that the extreme expense of such an action be funded when the very funds I could use to do this are the ones frozen and the subject of the concern?

Subsequent correspondence and Hansard reports indicate that APRA were [illegible] concerns with CNAL in early 2000 but did not act to protect investors at that [illegible] time. As a result, further funds were directed to CNAL's trusteeship when this [illegible] have been avoided. It also appears that the appropriateness of the directors could [illegible] been given closer scrutiny , either by APRA or ASIC.

As I understand it, the inaction by government regulatory bodies, APRA and perhaps ASIC, represents a dereliction of their duties resulting in unnecessary financial and emotional damage to the investors they were supposed to be protecting.

Under these circumstances, it seems unreasonable to expect individual investors to expend money, stress and anguish in a long drawn out attempt to recover their funds.

From the Hansard report of the Select Committee's recent interviews, it is indicated that, under Section 229 of the Superannuation Industry (Supervision) Act 1993, the Minister may, at his discretion, provide government restitution to aggrieved investors under circumstances such as these.

Accordingly, I appeal to the Select Committee to make such a recommendation to the Minister, with a view to restoring investors' funds to them in the shortest possible time.

Your early reply would be greatly appreciated.

Yours faithfully,

David McKellar for
The McKellar Family Superannuation Fund

cc APRA
ASIC
Mark McLean, Saxby Bridge
Peter Williamson, PricewaterhouseCoopers