


**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (a)**

Submission No. 117

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30 APR 2001

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10TH April 2001

Senator John Watson
Committee Chair
Senate Select Committee on Prudential Supervision
And Consumer Protection for Superannuation, Banking
And Financial Services
Parliament House
CANBERRA A.C.T. 2600



Dear Senator Watson,

RE: Commercial Nominees of Australia Limited
SAUTELLE FAMILY SUPERANNUATION FUND(ECMF)

My husband and I first became involved with CNAL beginning of ¹⁹⁹⁹1998. We were advised by our financial advisor Paul Hudson of Hudson-Gore Financial Services, having been referred to him by my brother in law -- Leslie Smoother, also a client of Paul Hudson.

change advised by Paul Hudson 11/5/01

I became aware almost immediately, of the lack of administrative reports from CNAL, especially since we were new clients. My husband, Peter phoned our advisor many times in regard to this. As we were ignorant and naive to superannuation procedures, we waited far too long before we learnt the facts. Details of shares and Cash Management Fund Monies were needed by us in order to understand the complexities of superannuation. We were led to believe that our monies were safe and secure and the cash was held in the National Bank at call at any time.

Paul Hudson enquired several times by phone and email to CNAL -- no response was forthcoming.

My husband and I together with my brother in law Leslie Smoother visited CNAL in person and met with Mr Roger Meikle -- Basically we were told it was a legal matter (Minutes of this meeting enclosed). Our concerns were now verified.

It is now common knowledge that the cash had been fraudulently misappropriated by the then directors of CNAL and invested in inappropriate investments. APRA has done nothing to help this matter -- in fact it was their job as a government regulator to have made sure nothing like this could happen.

Months have now passed and I am aware of the meetings and advisory boards etc. etc. looking into the CNAL fraud, but my question to you, is, will your government be prepared to exercise its power to recoup our monies or levy all Superannuation Funds to fund the deficiency. Enclosed is a copy of a clause 229, which I am led to believe can protect people like us. Or at the very least arrest the then Directors of CNAL who instigated this fraud and put them to trial.

My husband and I have put every cent into our Superannuation Fund in order to be self funded retirees - your government has encouraged this for many years and rightly so, however what has happened with CNAL and APRA is careless and unlawful and not our fault.

If situations like this are able to continue many more Australians will have to depend on aged pensions and we will all be the worse off. This monetary loss is extremely worrying along with many other families, I

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believe, as Australians, we all tend to - shut up and put up - and get on with things - continue to work and not retire as planned - so I write to you as an ordinary working couple hoping that you can help us.

Yours sincerely,



Mr. Peter M. Sautelle

Mrs. Lyn E. Sautelle

Encl.

Meeting, held 8:00AM 27 September 2000 at offices of Commercial Nominees Australia Ltd/
Fund Managers Administrators Australia (CNA/FAA), former trustee/manager, **purpose** to
demand transfer of the Sautelle and Smoother superannuation funds interests in the Enhanced
Cash Management Trust from CNA/FAA to Australian Superannuation Nominees Limited
(ASN), present trustee/manager.

Present

Roger Meikle, CEO CNA/FAA (Meikle)

Maryse MacMurdo, Corporate Legal Administrator CNA/FAA (MacMurdo)

Peter Sautelle, Sautelle Superannuation Fund (Peter)

Lynette Sautelle, Sautelle Superannuation Fund (Lyn)

Leslie Smoother, Smoother Family Superannuation Fund (Les)

(All members of the above superannuation funds had removed CNA/FAA as trustee/manager of
their respective funds and appointed SNA trustee/manager, all members being dissatisfied with
the quality of administration of CNA/FAA as to reporting of benefit status, reports on assets,
determination of pension range (Leslie Smoother) and slow, poor or lack of response.
Subsequently SNA had requested that the balances to the credit of members of the above super
funds be transferred to SNA immediately on the members' behalves.)

Peter, Lyn and Les each stated concern that CNA had not transferred their investments in the
Enhanced Cash Management Trust (ECMT) to ASN in spite of a number of instructions from
ASN.

Meikle: Responded that there were legal issues in relation to former staff of CNA and Paul
Hudson, financial adviser to both funds. Paul Hudson owed a professional responsibility to clients
as adviser, and "it was close to professional misconduct" that clients were advised to invest in a
fund, the ECM, as a cash management trust when it was and is a unit trust "which was in
trouble". It is an unlisted instrument.

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Meikle claimed that former managers "put CNA in this position". He said that these circumstances had been fully disclosed to the authorities.

Peter, Lyn and Les stated that they had received advice that the ECMT was fully secure and liquid and invested in interest bearing assets only, similar to a bank.

Meikle: The ECMT had not been invested in short-term interest bearing deposits and contained long-term deposits and investments as at 31/03/00. There was a retirement village investment which was to be disposed of and there had been other investments of a project or development type. Legal action was being undertaken or considered in relation to some of the assets of the ECMT.

Peter, Lyn and Les stated that they had understood that the ECMT was liquid in nature and readily available subject to superannuation rules. **Lyn** asked why clients had not been advised of the difficulties with the trust until today. **Les** referred to the obligations of CNA as trustee, especially when, as in his case, the client was retired and clearly desired to follow a conservative investment approach. The trustee would appear to have an obligation to intervene on choice of investment vehicle on behalf of the client whatever instructions were received.

Meikle: EMCT options were "Ride with the investments for 4-6 years at about 9% per annum" (later 4-7 years at 7-9% pa) or take out cash at a discount, possibly 4%. A report on the management of the EMCT had been commissioned and the report provided the authorities (APRA, ASIC ?).

The units in the ECMT had been transferred across to ASN as the legal holder for some members managed by ASN. The \$25,000,000 trust is still being run by ACN/FAA or its associate. (Check with Paul, Ben) - For members to call their investments would result in capital losses. Meikle says elsewhere that he is "currently winding up ECMT". If so it is probably not possible to withdraw funds from ECMT).

Peter, Lyn and Les gave as their reason for transferring to ASN that the technical services were consistently inadequate. Les instanced problems with members' reports for the Smoother Family Superannuation Fund for the year to 30/06/99, received by the members in December 1999 and obviously incorrect. Enquiries resulted in promises, but no results. (On 14/04/00) Campbell Simpson by e-mail advised that software providers had suggested ways to correct the allocations: "...would take a day to sort out but difficult to find the time". Appeared to be inability to calculate pension ranges applicable to Les. Following a meeting of Les and Paul Hudson with Matt Petersen of CNA (at CNA's offices on 11/04/2000 at 2PM) a letter to Les and Carolyn Smoother was received from CNA (dated 26/04/2000) admitting problems with their members' reports as to allocation of profits between them, (also causing delays in determining Les' pension range) and that a review of procedures was happening. These problems have not been resolved to date. Apparently members balances and investments other than ECMT were transferred to ASN in July 2000.

Meikle: Said CNA's relationship with Ben Smythe (ASN) may be in court and said Ben Smythe had failed in his duty to clients. He (Meikle) is at CNA/FAA to clean up the CNA organisation and he is "reasonably confident that he may tidy up by Christmas.

Referred again to the possibility of providing an election to either stay with ECMT for 4-6 years or to take cash (at a discount of 4%). There had been no interest on the EMCT investment for the last year. (Why had CNA not disclosed the position to investors up to now? This would apply to all investors, not only CNA clients. Does not CNA have a duty of care to its clients, whoever
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might be the responsible staff from time to time?: Les)

Meikle said CNA is "winding-up ECMT currently"

Said he had written to Paul Hudson; (apparently referring to a copy of a letter to Ben Smythe dated 6/07/2000 on payout of ECMT balances), which says CNA has absolute discretion as to redemptions under clause 8.1 of the deed. The letter goes on that, for liquidity reasons and an APRA notice, cannot redeem, but will report further within three (3) months - (my copy of this letter is not completely legible).

ECMT should have invested in high yielding interest-bearing bonds issued by e.g., banks. Instead, it invested in projects (retirement villages, property venture and projects) contrary to the terms of the deed/issue documents. Funds were also applied to loans to related parties also contrary to the terms of the deed.

Described Ben Smythe as "possessing boyish naivety". Meikle said he is "here for eight months" as "a clean-up specialist". He has initiated proceedings in relation to other parties involved in ECMT, is attempting to dispose of a retirement village and clean up miscellaneous investments, including property. He hopes to return principal plus interest in 4 to 5 years to subscribers of ECMT, which has a total value of about \$25,000,000.

At this point Paul Hudson telephoned Meikle and was put on speaker-phone:

Paul Hudson: Complained that he had been unable to communicate with Steve Hanich (CNA Operations Manager or such).

Meikle: No messages since April.

Paul Hudson: Not so, many messages.

Meikle: (patronisingly) Advice borders on gross misrepresentation. Explained difference between a cash management trust and a unit trust.

Paul Hudson: His advice from CNA was always that ECMT was a liquid asset fund and was in the form of an interest bearing deposit with National Australia Bank.

Meikle: Said the obligation is with ASN. Ben Smythe and Anthony Hall left CNA in September 1999 to head ASN.

Les: Queried position with his pension, which had been paid by CNA to date. (\$21,600 from June to 31/08/00 including 4 months to September and a \$10,000 special drawing for income tax purposes).

Meikle: No, now paid by ASN.

Les: Advised that payments had been coming through (see above). What will happen in future as to my pension?

Meikle & MacMurdo: We (CNA) always support pensions.

(Following this documents, (all of which, Lyn, Peter and Les advised, were not up to date), were handed out listing investments and transactions for both funds. Meikle called for copies which were up to date, which he received during the meeting but did not hand out the revised versions, .../getmsg?curmbox=F000000001&a=fb3b71cd47fb24c7374b4fd765545076&msg=MSG970 4/11/01

nor the original version in re Les).

Meikle committed to writing to the Sautelles and Smoothers on our situations, including lists of investments and transactions which are up to date.

At the conclusion MacMurdo strongly defended the ability of Campbell Simpson, saying that he now had proper support under present CNA management, implying that previous CNA management did not give him proper support. (Unless such a correction occurred so recently that an effect can't yet be detected, MacMurdo's view is "not proven" in my experience).

Part 45 — Financial assistance to certain funds

[Commenced 1 July 1994.]

Division 1 — Preliminary

[Commenced 1 July 1994.]

227 Object of Part

227 The object of this Part is to make provision for the grant of financial assistance for certain superannuation entities that have suffered loss as a result of fraudulent conduct or theft.

228 Interpretation

228 In this Part:

"fund" means a regulated superannuation fund or an approved deposit fund but does not include a self-managed superannuation fund.

[Definition of "fund" amended by Act No 121 of 1999 s 3 and Sch 1, item 55, with effect from 1 October 1999 by substituting "self-managed superannuation fund" for "an excluded fund". For transitional provisions see Act No 121 of 1999 s 3 and Sch 1, items 133-136 reproduced in the history note in sub 3(1).]

"levy" means the levy imposed by the *Superannuation (Financial Assistance Funding) Levy Act 1993*;

"loss", in relation to a fund, does not include an amount that the fund did not receive because of the failure of a person to pay contributions to the fund
[Amended by Act No 121 of 1999 s 3 and Sch 1, item 55.]

229 Application for assistance

229 (1) [Loss leads to difficulties in payment of benefits] If:

- (a) a fund suffers a loss as a result of fraudulent conduct or theft that occurs after the commencement of this Part, and
- (b) the loss has caused substantial diminution of the fund leading to difficulties in the payment of benefits;

the trustee may apply to the Minister for a grant of financial assistance for the fund.

229 (2) [Written application] The application must be in writing and be accompanied by such information as the Minister determines.

230 Minister may request additional information

230 The Minister may request the trustee to give such additional information as the Minister considers necessary to enable the application to be determined.

Division 2 — Determination of applications for financial assistance

[Commenced 1 July 1994.]

231 Minister may grant financial assistance

231 (1) [Written determination based on public interest grounds] If, after considering the application and any additional information given by the trustee, the Minister is satisfied that the fund has suffered loss as mentioned in subsection 229(1), the Minister is to determine in writing whether the public interest requires that a grant of financial assistance should be made for the purposes of the

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Senate Select Committee on Superannuation and Financial Services

MEDIA RELEASE

SAFETY OF SUPERANNUATION INVESTMENTS

The Chair of the Senate Select Committee on Superannuation and Financial Services (Senator John Watson, LIB, TAS) today called for an urgent investigation and report by the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) into the security of superannuation investments administered by Commercial Nominees Australia Limited (CNAL).

"The Committee demands an urgent investigation into non-arms length inconsistencies with fund operations, claims of improprieties, inaccurate descriptions of investment vehicles, and inappropriate and bad investment and administrative decisions made by some of the funds administered by CNAL", Senator Watson said.

The Committee is particularly concerned by press reports and representations to the Committee claiming disturbing losses of individuals' superannuation income on account of trustees' allegedly inappropriate investment activities. According to media reports, up to 80 percent of the retirement savings of around 300 retirees may be at risk.

CNAL, which is subject to regulation by APRA, is claimed to have invested superannuation funds in long-term investment projects, some of which were linked to private ventures and the directors of the same trustee company. The Committee is concerned that this is an example of incidents where superannuation fund trustees may have made investments on a non-arms length basis in a manner that may not be consistent with their obligations under prudential legislation.

Senator Watson said the Committee expects swift and direct action by APRA and ASIC to investigate the claims, in an effort to maintain ongoing confidence in Australia's superannuation system.

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http://www.aph.gov.au/senate/committee/superfinan_ctte/media/8Jan2001.htm

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