

Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a)

Submission No. 138

Submittor: Mr Jeff Trimmer
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Sent: Tuesday, 8 May 2001 4:24 PM
To: MORTON, Sue
Subject: CNAL - Enhanced Cash Management Trust etc

Senator Watson,

We have spoken a number of times previously and I have forwarded various communications to assist your work in the area of achieving complete relief for my clients whose "small APRA" superannuation funds have been affected by this misapplication of money.

2 of my clients were represented at your recent 30 March 2001 hearings in Canberra. I have since been provided with copies of the material given to them, which includes a number of written submissions provided to your Select Committee. These are additional to the Hansard-recorded verbal contributions of your invited witnesses.

Knowing the names of some of the "submitters" I recognised that the content of 2 of these items/letters could be of critical importance to your deliberations - indeed your findings and ultimate recommendations.

You may already have had this material presented to you in correct order - if not - as was the case of the copies given to me - they are out of order and thus the importance of their content may be lost, or inadequately stressed.

I have attached scanned copies of 2 critical pieces, which you already have (but perhaps - as mine were - out of order):

1. Letter 15-12-2000 by Stephen Hanich (2 pages) to Phillip Dally of Saxby Bridge.
2. Letter 26-10-2000 by former Directors of CNAL (they were Directors at the same time, which is revealing) to The Directors of CNAL (4 pages).

Mr Hanich's letter is of interest because:

- He was at one time General Manager of CNAL and thus (I would assume) would be a person "in loco director" in the eyes of the Corporations Law. For a General Manager to state that he was unaware whether a "formal redemption policy" was ratified by the Board is quite surprising, as it implies that he was not in attendance at Board meetings. I am not doubting the truth of what his letter says, only saying that it would be unusual for a board to not have a GM at meetings.

- He says clearly that all monies received into the ECMT AFTER 31 March 2000 were to be insulated from what he says were liquidity problems (which were certainly totally concealed from the marketplace - including myself as an adviser.) He goes on to say that the separation of deposits on the basis of either pre-April, or post-April was the basis of the then CNA administration leaving the ECMT "open" and allowing further inflow of new cash - this has a direct bearing on a number of my own clients, who would have been advised by me to avoid the CNA-offered superfund arrangements completely, had not the truth of these "cash account" misappropriations been so completely concealed by CNA, its Officers and its Directors.

I believe this adds to the fraudulent nature of such activities.

The fact that Mr Hanich refers to this "notional" 2nd pool is a clear admission that clients' monies were NOT treated even-handedly by CNA as the Trustee of the ECMT - another culpable act for a Trustee. It also means that a detailed examination of EVERY withdrawal during this period is warranted, as some form of "favouritism" was clearly and admittedly practised by CNA Officers/Directors - perhaps to their own personal advantage.

Is it therefore possible that, following a large inflow of "new money" into the ECMT (for instance the Queensland CNA client who testified at your hearings) there might have been a large withdrawal transaction by someone else?? (perhaps a Director/Officer "in the know", waiting for fresh available cash to relieve an emergency need for cash? In order to avoid unjust accusations being levelled at innocent people, would it have been wise for the APRA-commissioned investigation to confiscate and thoroughly investigate and trace "to source" every non-journal transaction? (ie every transaction causing money to go from one place to another)?

Mr Hanich's later (page 2) admission that CNA DID NOT send out any notification, is a quite revealing - they were taking in new funds to prop up a shortfall of their own making. This could ONLY be achieved by concealing the truth from potential clients and advisers alike.

Is there corroboration to Mr Hanich's closing assertion that Mr P Dally was told that monies after 31 March 2000 were fully liquid? It seems that no one (outside Saxby Bridge, according to this letter) knew of this, otherwise "the whistle would have been blown" by a client or by someone like me.

Bearing in mind another letter you have from Mr Peter Hedge of PWC, regarding certain investigations/reports he had apparently been engaged to perform, is Mr Hanich contending that he was unaware, or as General Manager was not seeing, the monthly reports to which Mr Peter Hedge refers in his letter? Whilst I am not disputing the content of his letter, the implication that

he was not aware of the activities etc of Mr Hedge only adds to a picture of secrecy within CNA itself.

2. Letter by then-Directors of CNA (4 pages) - On page 2, the authors admit that they knew about certain transactions (they probably authorised, or "rubber stamped" them also). They admit that they knew that these transactions suborned the possible liquidity of (for instance) the ECMT, because they say that another entity (an Eligible Rollover Fund for goodness sake !!) was standing behind and ensuring the liquidity of the ECMT. To have a ERF (which is a temporary superannuation storage/rollover vehicle) quaranteeing the liquidity of another quite separate investment trust, is possibly a serious breach of regulations anyway - it certainly breaches the intent by Parliament that future superannuation benefits cannot be used or "pledged" - even as security for one's own home loan!

The Key Features Statement prepared by CNA for each client's Superannuation Fund also nominates (as is required) a ERF. It now becomes a proven breach that the nominated ERF is in fact AWERF! This means that CNA was knowingly and intentionally NOT DEALING AT ARMS LENGTH, if it actually had an arrangement for the AWERF to stand behind the ECMT's liquidity - as these then-Directors say in their letter. Why was it not at arms length ? - because CNA was compulsorily investing all of its client superfund clients' cash holdings into the ECMT, yet the ECMT was "propped up" apparently by the Eligible Rollover Fund NOMINATED BY THE TRUSTEE in its KFS.

Had CNA not concealed these matters so thoroughly, none of my clients' super funds, of which CNA compulsorily used their cash management trust to hold the cash content, would have even commenced at CNA.

ie They attracted money only by concealment, then subsequently misused it to the disadvantage of my clients.

And the regulator admitted to you that they knew there was something amiss, but allowed people like me and my clients to commence and to CONTINUE CNA's Trusteeship for their Superannuation Funds. Never was the industry warned that so-and-so's reports or audits or annual accounts were late being lodged with APRA, or that an extension of time to lodge had been allowed. Never did APRA suspend the taking of further Funds by the errant Trustee, CNA.

I (and no doubt, other advisers, all convinced of the efficacy of the small APRA system) continued to inform clients, new and existing, of the extensive protection mechanisms implicit in the APRA-regulated arena of "small APRA" Funds.

Any reader of this 4 page letter needs to understand only the rudiments of investment, relating to an ERF (Eligible Rollover Fund), to realise that the statement made by these Directors in the letter absolutely admits their incompetence. Otherwise it is a very poor excuse for the expenditures made (I won't grace these transactions with the description "investments")

The statement is:

(page 4) "Another important consideration for the directors (ie the writers) was the nature of the AWERF.is an "eligible.....

hold money for lost members. By its very nature it is a long term investor".

In my opinion this is rubbish - if anything, an ERF is actually potentially a very short-term investor. Sure, there will be some small balances of ex-employees (such as of BHP) who have disappeared and overlooked their entitlements. However, any member could demand release and rollover of the money into another Fund AT ANY TIME. Thus a considerable level of liquidity is essential - quite the opposite to what the letter suggests.

In practice, an ERF gets money in because someone, after changing jobs, has not gotten around to arranging their superannuation/rollover within 90 days. However as an adviser, I do quite a bit of work, "straightening out", locating and gathering rollovers out of ERF's because the client had other seemingly more pressing matters to attend to in the earlier months.

If one had to legislate an investment strategy for all ERF's in Australia, it would be: part "at call" cash, plus some short term (not more than 6 months) term deposits with high-grade borrowers eg Bank-parented debentures or bank term deposits, of spread maturity/roll dates.

So, to someone who understands the superannuation system and also investment strategy matters, this statement by CNA Directors is the exact opposite of what you might expect.

It certainly should not be taken as a valid reason for them excusing - even actively pursuing - a "high return" strategy for the entrusted money of generally shorter-term rollover deposits.

In investment parlance, 2 things generally hold true:

1. If it's so good, everyone would be doing it.
2. High Return ALWAYS means high risk/volatility.

You do not have to be a company Director to understand this.

The final paragraphs relating to "ECMT" are also revealing. They seem to be devoted to the getting of a possibly higher interest return, which is again contradictory to the relevant investment principles. "Cash" is kept only to be liquid in a portfolio, rather than to be the procurer and driver of investment return. It allows a (superannuation, for example) Fund to pursue other longer-term and perhaps less-liquid investments to provide the return profile suitable for the needs of the client.

I trust that this is of real help to you. Should you or your Committee require further assistance - even perhaps to seek professional assistance from me, please let me know.

My postal address is: PO Box 21, West Beach SA 5024

Phone = (mobile) 0412 794 385 Confidential Fax = (08) 8355 3416

Kind regards - Jeff Trimmer

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15 December 2000

Stephen Hanich
17 Polding Road
Lindfield NSW 2070
Phone: 9416 1491

Mr Phillip Dally
General Manager
Saxby Bridge
Level 6, 4 O'Connell Street
Sydney NSW 2000

Dear Phillip

Enhanced Cash Management Trust (ECMT)

I was an employee of Commercial Nominees of Australia Limited (CNA) from 2 June 2000 until 1 December 2000. During this time, I held the position of General Manager reporting directly to Roger Meikle, Chief Executive Officer of CNA.

Within the first weeks of my employment, I was advised that the ECMT had a liquidity issue and that, as Trustee of this fund, CNA needed to determine a formal redemption policy. This was formulated between Roger Meikle and myself, however, I cannot confirm whether this was ratified by the CNA Board.

Nevertheless, this policy was adopted and applied to day-to-day redemptions from the ECMT. The main thrust of the policy encompassed the following:

1. A notional second Pool was determined within the ECMT for all monies received after 31 March 2000. Monies received prior to 1 April 2000 represented the first (or original) Pool.
2. Any redemptions requested in respect of monies within the second Pool were to be paid unprohibited. That is, any monies received after 31 March 2000 would not be caught up in the liquidity problems of the ECMT. This philosophy was in lieu of actually closing the ECMT to new monies and opening a completely separate account (however, in practice it would act exactly the same).
3. All pensions were to be paid irrespective of which Pool the monies were in.
4. Redemptions from the first Pool were treated on a case-by-case basis dependent on the size and purpose of the redemption.

I use the word "notional" second Pool, as no physical second Pool was established. Each redemption request was accompanied with a transaction listing from the ECMT to allow CNA to determine whether the redemption represented monies deposited before or after 1 April 2000.

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At this time, I did not have any knowledge of the underlying assets of the ECMT. I was advised by Roger Melkie that some of the assets were in the form of Loans and that these were causing liquidity problems for the ECMT.

I did not have any cause to believe that any of the Loans were unrecoverable. I further believe that Roger Melkie did not believe the Loans to be unrecoverable. It was quite clearly communicated to me that we needed to manage through the redemptions (by way of our Redemption Policy) until such time as the Loans were fully repaid. There was never a discussion suggesting that any of the Loans might not be repaid.

Given this, and the fact that all new monies were distinct from any of these liquidity issues, CNA did not send out any general correspondence to members and financial advisors advising them of the ECMT.

We believed that this was a relatively short-term issue and that notification to all parties concerned would only have resulted in a panic within the industry.

I can confirm a telephone conversation I had with you in early September, when you first became aware of the ECMT's liquidity. You had, at that time, been made aware of this through Paul Hudson, a financial advisor with about six superannuation clients whose rollovers out of the ECMT had been temporarily suspended. You then immediately rang me to determine what was going on.

Following this telephone conversation, I organised a meeting between yourself, myself and Roger Melkie to discuss the issues. At this meeting, Roger divulged to you the underlying assets of the fund and also his view on the situation.

Furthermore, at this meeting, Roger confirmed to you that all new monies received after 31 March 2000 were fully liquid. This was also my firm belief, and something which I probably confirmed to yourself and other Saxby advisors from time to time.

This policy remained consistent until the wholesale Board change in early November when the new Board determined to suspend all transactions within the ECMT.

Yours sincerely

S.H.A.

Stephen Harich

Is he ~~saying~~ saying that he was unaware of & for was not seeing/receiving the "monthly" reports referred to by Peter Hodge of AWE?

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26 October 2000

The Directors
Commercial Nominees of Australia Limited
Level 1, 140 Sussex Street
SYDNEY NSW 2000

Attention: Mr Peter Cain

Dear Sirs

**Commercial Nominees of Australia ATF
Enhanced Cash Management Trust ("ECMT")**

Introduction

We refer to the above and our various discussions in relation to certain loans from the ECMT.

The purpose of this letter is to summarise our discussions and to confirm the basis on which the directors of Commercial Nominees made the loans from the ECMT.

This letter has been signed by Andrew Skinner, Erica Robinson and Anthony Hall. Mr Ross Honeyman is aware of the content of the letter, however, he has not been contactable over recent days, not returning various messages left on answering machines.

We understand though that Power Capital, a company Mr Honeyman is associated with, has agreed to sell its sponsorship and administration rights to the AWERF to Beacon Funds Management for \$2 million. The sale of the sponsorship rights to Beacon Funds Management will result in an earlier loan provided by Beacon Funds Management to Power Capital being netted off against the sale proceeds.

Mr Honeyman was a guarantor of the earlier loan. As a result, the sale of the AWERF to Beacon Funds Management is in the interests of Mr Honeyman. Any commitment by AWERF to the ECMT may jeopardise the sale.

We have two people, independent of the directors of Commercial Nominees at the time, prepared to attest to the general content of this letter.

Loans

For the sake of clarity we are referring to the following loans that happened throughout late 1998 and 1999:

1. Peel Valley Unit Trust ("PVUT") @ bills plus 2.5% per annum;
2. Midway Gardens Partners ("MGP") @ 9.5% per annum; and
3. Equity Enhanced Fund ("EEF") @ bills plus 2.5% per annum.

Understanding of Directors for Basis of Loans

The above loans were made over a period of time by the directors having due regard to the relevant circumstances at the time of making each loan. Such circumstances included various inter-connected vehicles of which Commercial Nominees acted as trustee.

The loans were made on a commercial basis, however, the directors recognised that the loans were potentially not liquid given the nature of the loans. Accordingly the directors expected that if the ECMT had liquidity requirements that AWERF would be able to invest in the ECMT to satisfy any liquidity requirements. This was a reasonable expectation given the loans directly affected the value of investments indirectly held by AWERF.

As a result, there was the understanding of the directors that the AWERF would effectively "stand behind" the loans. The AWERF was to stand behind the loans by depositing funds in the ECMT to support its liquidity.

The directors viewed the arrangement as an implied underwriting agreement that was not dissimilar to an underwriting arrangement that the directors at the time in May 1997 agreed to with respect to the redeemable preference shares in Strategic Capital Investment Limited ("SCIL"). In this instance the directors agreed to provide up to \$3.25 million to SCIL from various superannuation funds for which they acted as trustee.

Rationale

All three loans were made to support the Equity Enhanced Fund ("EEF") with respect to various investments it held. Importantly the AWERF owned approximately 70% of the units in the EEF. These units were held in the Pooled Division of the AWERF.

The Pooled Division at the time had a considerable investment in the Australia First Life PST which subsequently was rolled into the Beacon Capital Secure PST. The Australia First Life PST had received a windfall gain from the AMP demutualisation. This gain was being distributed to unit holders over a three year period and had also been used to bolster the reserves of the PST.

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At the time, the investment in the PST was yielding approximately 18% per annum. Needless to say it was yielding approximately 10% more per annum than bills plus 2.5%. This equates to \$100,000 per annum for every million dollars.

At the time the BEF had three investments that were causing concern. These were the investments in Peel Valley Mushrooms Limited ("PVM"), the money on deposit with Bellcap Pty Limited ("Bellcap") that was contingent upon the performance of Queensland Essential Oils Limited, and Strategic Capital Investment Limited ("SCIL").

The loan to the PVUT aided the PVM and Bellcap investments:

- The loan to the PVUT provided PVM with a farm to continue to grow mushrooms.
- The directors had received a valuation from Colliers Jardine that placed a valuation on a similar farm at between \$15 and \$17 million.
- The mushroom farms were ultimately to be merged with two tomato farms and a stock market listing attempted.
- The directors of PVM were also associated with the two tomato farms and had agreed to exchange the money on deposit with Bellcap for money on deposit with ATF No.1 Pty Limited ("ATF") that was contingent upon the performance of Quality Food Productions Pty Limited, the manager of the two tomato farms.

Notwithstanding the fact that the loans provided PVM a farm and enabled the directors to exchange Bellcap for ATF, the two mushroom farms at full potential production were valued between \$15 and \$17 million. After the loan from the ECMT and the vendor finance there was still \$4 million of equity on a \$15 million valuation.

The loan to MGP supported the SCIL investment.

- SCIL had approximately 1.7 million shares in AHC Limited. The shares were trading at around 55 cents per share. On a fire sale, SCIL would have received between 30 and 40 cents per share.
- The MGP purchased the shares from SCIL for 88 cents per share.
- The MGP arrangement also involved a retirement village development that AHC was to build and manage. AHC believed it could return between 30 and 35% net to investors. This provided the investors the inducement to acquire AHC shares at 88 cents per share. In addition it sought to add value to AHC by providing it with profitable work.

The loan to BEF aided in the diversification of the BEF and the fulfillment of commitments

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AWERF

Another important consideration for the directors was the nature of the AWERF. The AWERF is an "eligible rollover fund" ("ERF"). An ERF is generally used by superannuation fund trustees to hold the money of lost members. By its very nature it is a long term investor.

In addition to the AWERF being a long term investor, the directors had also been embarking on a program of placing funds into reserves. The over performance that had been achieved through the investment in the Australia First Life PST was being used to bolster reserves.

The collective underwriting by the AWERF meant the directors did not have to redeem the AWERF's investment in the Beacon Capital Secure PST and lose out on the 18% per annum this fund was returning.

ECMT

At the time substantial cash was accumulating in the ECMT. This cash was returning bills minus 0.5% per annum. Lending this money to the PVLT and EEF meant the ECMT was able to get an additional 3% per annum. The money lent to MGP returned more than an additional 3% per annum given where interest rates were at the time.

The directors also capped the return of the ECMT to bills plus 0.5% per annum which meant that the ECMT was building up reserves. This was seen as a prudent course of action in the event something unforeseen occurred. In addition, unit holders in the ECMT were benefiting by receiving a return of bills plus 0.5% per annum which was 1% per annum greater than the comparable cash at bank rate.

The directors considered it reasonable at the time that funds in AWERF could, if necessary, be invested on a commercial basis in ECMT to satisfy liquidity needs arising from the illiquid nature of the loans made by ECMT described above.

Should you have any further queries about the above please do not hesitate to contact us.

Yours sincerely

Anthony Hall

Andrew Skinner

Erica Robinson

Absolutely wrong - It is the opposite of Rio

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