Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a)

Submission No. 21

Submittor:

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29 March, 2000

Ms Sue Morton
Secretary
Select Committee on Superannuation and
Financial Services
Parliament House
Canberra ACT 2600

Dear Ms Morton

Please find attached my submission to the Senate Select Committee's Inquiry into Superannuation and Financial Services. This submission addresses the first term of reference of the Inquiry, namely the prudential supervision of superannuation and financial services in Australia.

As you are aware I previously made a submission to the Senate Inquiry on behalf of the Estate of my late father but the Senate Select Committee resolved not to accept that submission as the matter was before the Courts.

The matter has now been settled via a Court ordered mediation held on 9 March. The terms of the settlement are confidential and nothing that is contained in the submission is either intended to or does breach that confidentiality.

Should you wish to discuss any aspect of the submission, please do not hesitate to contact me on [03] 59665882.

With best wishes Yours sincerely

Fiona Ogilvy-O'Donnell

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Summary of Key Points of Submission to the Senate Select Committee's Inquiry into Superannuation and Financial Services

> Prepared by Fiona Ogilvy-O'Donnell March 2000

Summary of Key Points of the Submission

The key points in the submission are

- 1. The occurrence of fraud is a reality within the Australian superannuation industry.
- 2. Because it has happened, the Parliament of Australia can no longer assume that existing regulation will ensure the integrity of superannuation funds.
- 3. There are a range of actions open to Government and the Australian Parliament as a whole which would encourage speedy restitution of defrauded superannuation funds, deal with those responsible for such frauds and avoid recurrence of superannuation fraud.
- 4. These include a more effective system of regulation, consumer education, and an alternative approach to tax deductibility of legal expenses for defaulting trustees. Recommendations are provided in each of these areas.

Fiona Ogilvy-O'Donnell

29 March 2000

A Submission to the Senate Select Committee on Superannuation and Financial Services

Prepared by Fiona Ogilvy-O'Donnell

March 2000

Senate Select Committee Inquiry into the Prudential Supervision of Superannuation Services in Australia

1. Introduction

Given the fact that superannuation is a compulsory retirement savings policy supported by both the Federal Government and the Opposition, it is appropriate that the Senate Select Committee has been established to review the prudential safeguards within the superannuation funds industry.

With an increasing number of Australians being required to rely upon their superannuation in retirement, it is critical that Government, the superannuation industry and related industries take every possible step to ensure that superannuation funds are secure and well managed.

This submission is made in the belief that I have some relevant experience and recommendations to contribute to the Review. The relevant experience is the embezzlement of the majority of assets of my late father's superannuation fund by an employee of one of Australia's largest funds actuaries. The fraud was discovered in December 1996. The matter was settled at a Court ordered mediation on 9 March 2000. As one of the Executors of my father's estate, I have spent considerable time, funds and emotional energy restoring the superannuation assets of our late father. As a result of this experience, I believe I am well placed to make some observations and recommendations that could improve the prudential safeguards for superannuants in the future.

The experience that our family has had would not be wished on any other superannuant or their family. Our father died in April 1997, four months after the fraud was discovered. In that period he lived the worst nightmare of any retiree or superannuants in Australia ie discovering on retirement the vast majority of his superannuation funds had been embezzled. It is the family's opinion that the stress of the fraud in no small part contributed to the untimely death of our father.

2. Background Information

On 14 December 1996, the Business section of The Age newspaper carried the following headline "Funds manager faces \$1m-plus fraud". {Appendix1} The article stated that "A former senior manager at Towers Perrin Forster Crosby is alleged to have embezzled the money from an individual client's funds over eight years. It went on to say "Mr Goddard {Towers' acting office manager} said the client from whose fund the money had allegedly been taken had been informed about the matter. The client, whom he would not name was not considering legal action at this stage and was totally amicable about the situation, he said."

The client referred to in The Age article was my father, the Late Mr Alex Ogilvy.

The senior employee referred to in the article was sentenced to a jail term for the theft of over \$1.3m in May 1997.

Towers Perrin admitted liability for the defalcation of our father's superannuation funds in April 1999. This admission of liability came as a result of the Executors issuing proceedings against the company. The Executors' statement of claim against Towers Perrin and the defence including the admission of liability have been filed in the Victorian Supreme Court.

3 The Role of Towers Perrin in the Australian Superannuation Industry

Towers Perrin Financial Planning Services in Australia is a wholly owned subsidiary of Towers Perrin USA. In Australia Towers Perrin is the dominant actuary of the corporate superannuation industry funds with a 42% share of the Australian market. Towers Perrin also has a 14% share of the asset consultant market and 36% of the communications consultant market in the corporate superannuation funds market in Australia.1 Within these major corporate superannuation funds, there are approximately 456,000 members with funds in excess of \$21,253 million, who rely upon either actuarial, asset consultancy, or funds administration services provided by Towers Perrin 2

Apart from the corporate sector, Towers Perrin has actuarial responsibility for a significant number of government and semi-government superannuation funds. These include:

- the Australia Post Superannuation Scheme
- the Reserve Bank of Australia Officers' Super Fund
- the Superannuation Scheme for Australian Universities
- the Victorian Local Authorities Superannuation Fund
- the Victorian Superannuation Board State Superannuation Funds.

The combined membership of these funds is 456,232 with collective assets of \$21,553m.3

The Telstra Superannuation Scheme has 67,900 members with assets of \$6,400m uses Towers Perrin's asset consultancy services, as does the Australian Government Employees Superannuation Fund. This fund has 111,159 members with assets of \$232m,4

Superfunds magazine June 1999, page 48,53
 SuperReview , December/January 2000, pages 28-33

³ Superfunds magazine, May 1999, page 42-43

⁴ SuperReview, May 1999, page 22-23

The above data does not necessarily reflect the full extent of Towers Perrin's influence in the Australian superannuation industry. However, it serves to demonstrate that the company, whose systems enabled an employee to defraud our father's superannuation, plays a significant role in respect of over one million of Australians' superannuation funds. Appendix 2 contains material on Towers Perrin's role in the Australia superannuation industry.

Despite all of the regulatory requirements, a Towers Perrin employee was able to flout all the fiduciary obligations and Trustee responsibilities owed to our father. Given Towers Perrin's expertise as an international risk manager, it has been difficult to accept that it took three and a quarter years to resolve the matter.

It does not seem right that, through no fault of our own, we were forced to spend significant time, and resources attempting to gain justice in relation to our father's superannuation. In fairness, the task of reconstructing an embezzled superannuation fund is complex and open to lots of argument. But my point is that lay people are always going to be at a great disadvantage in having to endure such an exercise.

4 Recommendations

The incidence of superannuation fraud should be used to:

- improve the security of superannuation funds
- strengthen the prudential safeguards within the superannuation industry and related industries
- enhance the vigilance of all superannuants with respect to the management of their superannuation funds.

The Australian community is poised to embark upon a major debate about greater choice in superannuation. It is critical that the major players such as the funds managers and actuaries in this debate do not override the interests of the individual superannuant. In light of our experience, greater choice in superannuation must be underpinned by [1] a system of effective regulation, [2] consumer education and [3] an alternative approach to tax deductibility of legal expenses for defaulting trustees

4.1 A System of Effective Regulation

An effective system of regulation of the superannuation industry must begin with greater accountability by the industry itself as well as all the related players, including APRA, the ATO, the banks and the insurance industry.

4.1.1 The Responsibilities of Trustees

One of the most critical issues is ensuring that superannuation funds are appropriately registered with APRA or the ATO. In November 1999 we wrote to APRA in an attempt to seek guidance about our responsibilities as the newly appointed trustees of our late father's superannuation fund. Appendix 3 contains our correspondence with

APRA and their reply. As can be seen from this material, the fund was never established as regulated fund with the Occupational Superannuation Commission in 1987. This was of no comfort to us as we are left without any regulatory authority responsible for the events and the consequences.

Recommendation 1: Where a superannuation fund is defrauded, the Trustees of that superannuation fund should have to show cause why they should not be prohibited from acting as Trustees in the superannuation industry thereafter. Serious financial penalties should apply. APRA should maintain a public listing of Trustees of superannuation funds which have been defrauded, regardless of whether these funds were regulated or not. This list of deregistered Trustees should be circulated to employers and employees via their superannuation fund managers. A similar regime applies to Directors of companies that become insolvent and leave creditors unpaid.

4.1.2 The Role of the Banks in the Superannuation Industry

A fraud of the magnitude of that committed against our father's superannuation fund did not occur in isolation. Clearly, the banking system was used to facilitate the fraud by the Towers Perrin employee. It is obvious that there were inadequate safeguards within the banking system to disclose the unorthodox movement of funds and transactions occurring on a named trust account, specifically called the AW Ogilvy Superannuation Fund account. It is noted in this context that the banking system is keen to secure a greater role in the superannuation industry in Australia.

Recommendation 2: Banks handling superannuation accounts should be required to develop new auditing procedures to regularly monitor the numbers of signatories on superannuation fund accounts, ensuring that they comply with Trust Deeds. Banks should be required to provide superannuants directly with an annual statement of funds, the dates of deposit and withdrawals.

4.1.3 The Role of the Insurance Industry in Superannuation Fraud

A superannuant has a right to expect that those responsible for the management of superannuation funds will carry insurance designed to protect the superannuant in the event of a breach of fiduciary trust by an employee. What is more problematic in the event of a fraud is the potential conflict between the trustee relationship owed to the superannuant by those responsible for the funds' management and the latter's contractual obligations to its insurer.

Recommendation 3: Given the compulsory nature of superannuation in Australia, the Government and the Parliament have an obligation to protect superannuants in the event of a fraud on their superannuation fund. It is recommended that legislation be passed by the Federal Parliament to prevent the commercial interests of the insurance industry and the insured ie the funds

superannuants in the event of a fraud on their superannuation fund. It is recommended that legislation be passed by the Federal Parliament to prevent the commercial interests of the insurance industry and the insured ie the funds managers, asset consultants, funds actuaries conflicting to the detriment of a victim of a superannuation fraud. Victims of superannuation fraud should have a right to immediate restoration of their funds.

4.1.4 Protection of Superannuants faced with Fraud of their Superannuation Fund

My father was a retired Chartered Accountant, who had been senior partner with Arthur Young, now Ernst Young, before taking up a number of non-Executive Directorships with some of Australia's largest public companies. He had been a prudent financial manager, with a long history of investment on the Australian stock exchange. His superannuation fund was due to terminate on 10 January 1996, three months after he turned 70 years of age. From this date until the fraud was discovered in December 1996, he did not have access to his superannuation funds. It needs to be said that during that eleven months, he arranged over 29 appointments with the Towers Perrin employee, none of which resulted in the funds being made available to him.

During this same period, he was forced to sell shares to support himself. In this sense, he was fortunate in that he had other resources to fall back on. My concern is for those people who would not have had that safety net and one has to assume this could be a significant proportion of the population.

It is a regrettable fact of human nature that fraud within superannuation funds will occur again. One of the precautionary measures Governments can take is to establish a mechanism that protects superannuants on discovery of fraud. Given the nature and purpose of superannuation, it is likely that a fraud may not be discovered until retirement. There must be a safety net to protect the victims in the immediate period following the fraud. The safety net needs to incorporate financial support, access to specialist legal and accounting services as well as emotional counselling, if required. The alternative is a David and Goliath scenario, impossible for many to accommodate.

These post-fraud support services should be paid for through a superannuation industry levy, taken from the profits generated by the industry, not through increased charges to superannuants.

Recommendation 4: New penalties should be established by the Australian Parliament which levy fines for every month that a terminated superannuation fund is not made accessible to the superannuant. All parties responsible for the management of the superannuation fund should jointly and individually be subject to these financial penalties.

Recommendation 5: The Government and the superannuation industry should develop a means by which the rights of a victim of a superannuation fraud are given higher priority than the commercial interests of those responsible and the insurance industry. This must include providing immediate access to an alternative income stream while the processes of location of the funds is determined.

Recommendation 6: The government should establish mechanisms by which victims of superannuation fraud can access, free of charge a range of services to assist them cope with the financial, emotional, legal and accounting implications arising from such a fraud.

4.1.5 The Role of the ATO

For the period 1987 until 1996, my father made legitimate tax deduction in relation to his superannuation fund as part of his annual income tax return. At no point did reconciliation between his superannuation tax deduction and the OSC/APRA fund number occur. While it is appreciated that the ATO now has responsibility for excluded funds and that this should overcome what happened in my father's case, there should be scope for cross checking of superannuation funds data with tax return statements.

Recommendation 7: As part of the new APRA compliance audits, the ATO participate in a program of random cross checking of superannuants funds data with ATO tax records.

4.2 Consumer education

In light of our experience, it is clear that the Australian superannuation industry has still got much to learn about the management and resolution of incidences of fraud from within a superannuation fund. Likewise, it is most unlikely that superannuants are aware of the significant difficulties they may encounter were they to find themselves in the situation of our father and his beneficiaries.

In a recent survey undertaken by KPMG, it was revealed that one third of Australian companies fail to notify law enforcement authorities when they become victims of fraud. The research also found that it was often respected employees of companies familiar with the fraud prevention control strategies who were the perpetrators of fraud within a company.⁵

In the main, superannuants take little interest in the management or security of their superannuation, content in a misguided belief that because the Government has made

⁵ The Age Newspaper, Thursday 16 September 1999, "Corporate fraud goes unreported", page7

superannuation compulsory, legislative controls make it secure, if not Government guaranteed.

The choice debate on superannuation is the ideal opportunity to make explicit the fact that fraud can occur in the superannuation industry and is an ever-present risk. The Government's consumer education program in respect of funds' choice should highlight the ways in which superannuants can work to prevent fraud by exercising much greater diligence in obtaining, reading and understanding the documentation provided by superannuation fund managers, banks and employers.

Without Government participation in a program of consumer education, superannuants will continue to be left in the hands of the marketing machines of the superannuation industry and will make uninformed assumptions.

4.3 An Alternative Approach to Tax deductibility of Legal Expenses for Defaulting Trustees

One of the most significant actions that the Federal Government could take to deliver greater consumer protection in the event of a defalcation of a superannuation fund is to remove the preferential tax treatment it presently provides to corporations involved in litigation in this area.

On Friday 29 October 1999 an article in the Financial Review titled "Better Judgement will keep judges out of court" discussed the issue of tax deductibility for companies engaged in litigation. While the case discussed in the article is irrelevant to this submission, what is highlighted is the advantage a company has over individuals, who may be forced into litigation over issues of superannuation fraud. As the law presently stands, the Government is providing a substantial advantage to companies responsible for the superannuation embezzlement through tax deductibility of their legal costs. No such tax deductibility is available to individual victims.

Tax deductibility for litigation costs should not be available to any company responsible for fraud on a superannuation fund. This would remove the current advantage enjoyed by companies and may result in a quicker resolution of these matters. Otherwise companies and their insurers are supported in a strategic and elongated approach to claims.

Recommendation 8: The Government introduce legislation to remove tax deductibility for legal costs for any company found to be responsible for the fraud of a superannuation fund.

⁶ The Financial review, Friday 29 October 1999,"Better judgement will keep judges out of court", page30

5 Conclusion

An effective review of the prudential supervision and consumer protection of superannuation can only occur if the Senate Select Committee is aware of the realities faced when superannuation fraud occurs. Unless I had been personally touched by this situation, I would not have imagined it possible for funds to be so vulnerable and their recovery to be so difficult.

Successive federal governments have supported the need for enhanced superannuation payments by Australian employees. Having done this, political parties of all persuasions have a responsibility to ensure that these compulsory savings are held in funds that are prudently and securely managed. Otherwise, the main aim of having people provide for their retirement will be defeated.

Fiona Ogilvy-O'Donnell 31 March 2000

APPENDIX 1

Submission from Fiona Ogilvy-O'Donnell

RECEIVED TIME 31. MAR. 15:58

PRINT TIME 31. MAR. 16:06

BY DAVID SAUNDERS

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> THE JUNE AGE

SECTION (3)

SATURDAY 14 DECEMBER 1996

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G) THE LAW

ber after a dispute over his position. He had been with the company since 1987.

Towers' acting office manager,
Mr Andrew Goddard, out The Age
yesterday that the manager gave
birnself up to the company and on Thursday. detectives at the major fraud group

The former senior manager at Towers Perrin Forster & Crosby is alleged to have embezzled the model from an individual clients

ind over eight years. He left Towers Perrin in Septem-

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her he gave himself up to police

knew of the alleged theft

investigating accountants were continuing their search for the year period, was about \$2 million. unaccounted for, including accrued interest over the eightbelieved the amount of money was uncertain. However, it is The extent of the alleged fraud

whose fund the money had alleg-Mr Goddard said the client from missing funds

it was the first the company

action at this stage, and was totally amicable about the situation, he name, was not considering legal The client, whom he would not

"We are pursuing the matter with our insurer. Obviously we hope that the insurer will make good any loss." Mr Goddard said. is a complete shock to everyone at He said the alleged fraud came

about the matter, edly been taken bad been informed

the multinational company. People who have known and worked with (the manager) around the world are really severely shaken by the news," he said.

benefits at Towers Perrin in ances of the company.

The director of employment outside the normal checks and baler appeared to have been acting what had happened to the missing funds but claimed that the manag-Mr Goddard said it was unclear

ney, Mr Ken Lockery, said the for-nier manager's rule wittle in the company did not involve any handling of clients' money at any stage. He refused to make any fur-

is one of the biggest asset consuinclude investment funds for govemment bodies, industry groups tants in Australia, with clients that ther comment on the matter. and corporate clients as individual clients. Towers Pertin Forster & Crosby ¥. S.

APPENDIX 2

Submission from Fiona Ogilvy-O'Donnell

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Quick reference guide to Corporate Supergnnuation Funds

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DECEMBER/JANUARY 2000 SUPER REVIEW . 33



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Page	200	elstra super scheme (155 Division Two)						£	Towers Pertin	Freehill	Legal & General	NA NA	Price Waterhouse	e de la companya de l	, E
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SUPERFUNDS MAY 1999

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Descent Calciument Speciment Speci			***************************************						Fox, Hunt & Hunt; Coltmans	_		;		
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Page 1 P	-VSUPER Victorian Superannuation Board						~	Toware Perrin					***************************************	***************************************
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PUBLIC SECTOR FUNDS TOP TWENTY CREDITING RATES YEAR TO SO TUNE 1998 (%)	ď
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ASSETS PER MEMBER

and overseas shares and property. The best performer was The top-performing public-sector funds are often growth-oriented, with typically higher-than-average allocations in local

is reflected in the high level of assets per member. The Reserve Bank Officers Superannation Func has the most assets per member with \$221,117, followed by the Public-Sector Executive Superannuation Scheme (trustee is FSS Teustee Corporation) with \$173,800, the Western Australian Fire Brigades Superannuation Fund with \$150,498 and the Energy Industries Superannuation Scheme Pool B with \$148,994. The generous benefit structure of some public sector schemes the growth fand of the Western Australian. Local Government Superannuation Plan with an 18.8% crediting rate, follower, by its balanced fund with 17.4%. The new NSW-based Energy Industries Superannuation Scheme, which broke away from State Super, was also a top performer: the Pool B fund's crediting rate hit 15.4% and the Pool A fund, which is high-growth, h

FUND ACTUARY

Other 3%	W√liamson Narce 1%	
Buck Consultants 5%	Brett & Watson Pty Ltd 1%	
Old State Actuary 9%	Sedgwick Nobre Lowndes 1%	
Aus Govt Actuary 17%	William M. Mercer 34%	
Towers Perrin 29%		

Pty Ltd 1% Narce 1%

This actuary's market share is based on asset size

MAY 1999 SUPERFUNDS

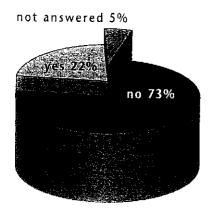
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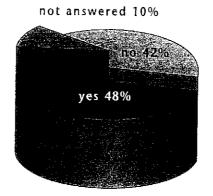
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	imber Industry Superannualion Scheme	21802	23500	102	122 12	50	2 D	The state of the s	Suncorp	S.III		McCoualg & Co	90	
TRANSECURE	Transport Employees Security Scheme	4367	4720	13	17.	74 6	Phillips	***************************************	A C & L 44411	/ices	-	<u>M</u>		Yes
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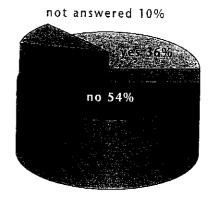
Have you expanded your marketing activities in the past 12 months?

Do you have any plans to expand marketing activities in the coming 12 months?

-ls choice of fund in your members best interests?







AVERAGE ASSETS PER MEMBER

The generous benefit structure of some corporate schemes is reflected in the high level of assets per member. The corporate schemes for executives have higher levels, in some cases five times the amount, than those for staff.

Airline industry schemes have particularly robust levels of superannuation. The 33 members of the Ansett Australia Flight Engineers Superannuation Plan have assets of \$545,454 per member; the Ansett Australia Pilots Management Superannuation Plan have assets of \$188,481 per member, the Qantas Airways Limited Staff Superannuation Plan has assets of \$121,072, the Ansett Australia Flight Attendants Superannuation Plan has assets of \$59,817 per member and the Ansett Australia Ground Staff Super-annuation Plan has assets of \$55,655 per member.

CHOICE-OF-FUND

Corporate funds are not convinced of the merits of choice-of-fund. Even though it is unlikely that the choice-of-fund legislation will eventuate in the short term, comments from corporate funds are worth noting.

Overwhelmingly, corporate funds say an intensive education campaign is necessary before people can make informed choices.

"A properly focused communication and education program which is both interesting and relevant to members is an essential precursor to choice-of-fund," said the fund manager of one of the oldest and most respected corporate funds.

Another fund secretary said choice-of-

fund will introduce unnecessary costs and complexity. Instead, he suggested "flexibility of design, such as choice of investment and contribution levels, and partnership between employers, trustees and fund members are much more important and more cost-effective for employers and fund members than choice-of-fund."

One fund pointed out that most members will never be sufficiently educated to make appropriate investment decisions – and few wish to be.

A number of corporate funds believe that member investment choice provides ample choice in a plan – particularly if the employer is covering all administration and insurance costs.

Defined benefit funds would be disad-

vantaged in a choice-of-fund environment, they said.

ASSET ALLOCATION

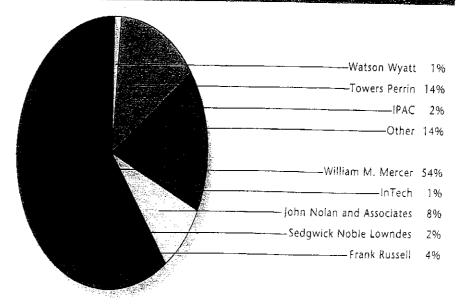
Not surprisingly, defined-benefit funds hold a higher proportion of funds in equities than accumulation funds. They can pursue a more aggressive investment strategy, rather than being at the mercy of the gyrations of the investment markets.

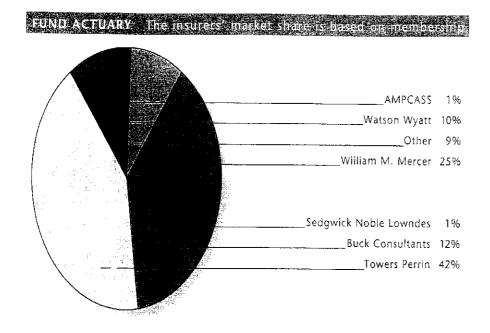
Accumulation funds have domestic and international equity weightings about 5% lower than defined-benefit funds. Property is 1% lower for accumulation funds.

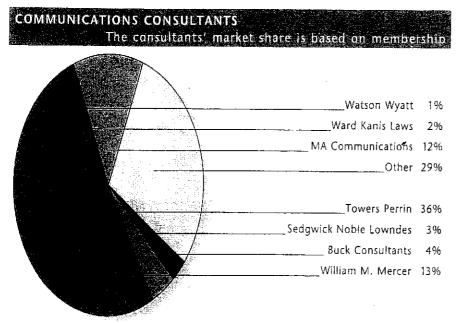
The more aggressive investment strategy of defined-benefit funds, where the employer bears the investment risk, is evident in the higher total equities and prop-

ASSET CONSULTANTS

The asset consultants,' market share is based on asset size







William M. Mercer dominates the lawyers with 33% market share, followed by Mallesons Stephen Jacques with 25%. While 25% of corporate funds self-insure, 20% use AMP and National Mutual.

Mercer is also the dominant asset consultant with 54%, well ahead of Towers Perrin's 14%.

Towers Perrin is the preferred communications consultant.

INVESTMENT MANAGERS

The pattern of investment-management selection by corporate funds is similar to their public-sector and industry counterparts. For example, the favoured manager of Australian equities is Maple Brown Abbott, followed by Portfolio Partners, J.P. Morgan, Hambros Hopkins and Colonial First State.

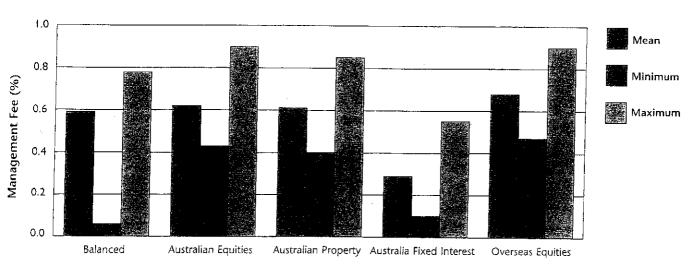
International equity managers are headed by Lazard Freres and followed by Barings, Alliance Capital, J.P. Morgan, Fleming, Capital Investment, Salomon Smith Barney and Credit Suisse.

The most popular fixed-interest manager is UBS Brinson followed by AMP, BT, Norwich, Macquarie, County, NMFM, Westpac and Barclays.

BT heads the list of international fixed-interest managers with a lion's share of the market. Next are Norwich, UBS Brinson and AMP.

AMP is the preferred Australian property manager, followed by Lend Lease and Schroders, Morgan Grenfell. BT is the popular tactical asset allocation manager, together with State Street Global Advisors and J.P. Morgan.

INVESTMENT MANAGEMENT FEES



Investment Type

APPENDIX 3

Submission from Fiona Ogilvy-O'Donnell

A.W. OGILVY SUPERANNUATION FUND LIST OF MATTERS FOR GUIDANCE

- 1. Was the Fund issued with an Occupational Superannuation Commission number on its establishment in 1987?
- 2. Who were the registered Trustees of the Fund on an annual basis during the period June 1987 to May 1999?
- 3. Who were the auditors of the Fund on an annual basis from June 1987 to May 1999?
- 4. Did the Trustee(s) (or Towers Perrin) provide the required audit statements and certificates to the Occupational Superannuation Commission/Industry Superannuation Commission each year in the years 1987 to 1999?
- 5. What documentation, if any, should the former Trustee (or Towers Perrin) have provided to us when we assumed our role as Trustees?
- 6. What were the obligations owed by the Trustee and/or Towers Perrin to our late father from the date the fraud was discovered on 9th December, 1996 until his death on 23rd April, 1997?
- 7. What were the obligations owed by the Trustee and/or Towers Perrin to the Executors of the estate of the late Alex Ogilvy from the date of his death until the date upon which we assumed trusteeship?
- 8. Can APRA exercise any authority to help us identify the previous Trustees and secure the previous Trustees and/or Towers Perrin's documentation relating to the Fund?

Australian Prudential Regulation Authority



14 December 1999

Insurance and Superannuation Telephone: 03 9246 7517 Facsimile: 03 9663 5085 E-Mail: mondira.mukerjee@apra.gov.au

Ref No.: M99/00890/M1199154

The Trustees
Alexander Wills Ogilvy Superannuation Fund
7 Riverside Road
HAWTHORN VIC 3122

Dear Trustees

ALEXANDER WILLS OGILVY SUPERANNUATION FUND

We refer to your letter dated 15 November 1999 requesting certain information from APRA in relation to the abovementioned fund.

A search of our database under the name provided by you has indicated that there is no record of this fund on our system. This means that the fund did not lodge any annual returns with the former Insurance and Superannuation Commission (ISC) under the former Occupational Superannuation Standards Act 1987 (OSSA) between the income years 1987 to 1994.

Further, according to our database, the trustees did not elect to become a regulated fund under the Superannuation Industry (Supervision) Act 1993 (SIS) and they did not lodge any annual returns with APRA for the income years 1995 to 1998. From this information the fund appears to have been and is a continuously non-complying unregulated fund.

In the light of the above, we are unable to provide you with any of the information requested under items 1,2,3, and 4 of Appendix 3 to your letter. With regard to items 5 to 8, whilst some guidance has been provided below, it should be noted that it is not the role of APRA to provide legal opinions in relation to the operations of a superannuation fund. Accordingly, the trustees are urged to seek further legal advice in this matter.

The above said, as a guideline, responses to the items 5 to 8 are provided below. It should be noted that these responses are not comprehensive and much of the information provided in these responses may not be relevant in respect an unregulated fund.

5. The trustee of a regulated superannuation fund is required to maintain all relevant records of the trustee decisions in respect of the superannuation fund including records of changes of trustee. The trustee is also required to keep all member reports for at least ten years. It would be a prudent practice to hand over all of the relevant records and reports to the new trustee when it takes over the management of the fund.

GPO Box 9836 Melbourne VIC 3001, Level 21 Casselden Place 2 Lonsdale Street Melbourne VIC 3000 "General Enquiries: Tel: 03 9246 7500 Fax: 03 9663 5085

- 6. The trustee of a regulated superannuation fund is required to notify APRA immediately after becoming aware of a significant adverse event in respect of a member's benefit.
- 7. The trustee of a regulated superannuation fund is required to pay the death benefit in respect of a member to either the member's dependant or to the member's legal personal representative.
- 8. As stated above, a search of our database indicates that the fund may be unregulated. APRA does not have any powers over, or authority in respect of, unregulated funds.

We regret being unable to assist you any further in this matter.

Yours sincerely

Gordon Walker Senior Manager

Melbourne