



# Senate Select Committee on Superannuation and Financial Services

## Main Inquiry Reference (a)

### Submission No. 233

(Supplementary to Submission Nos. 23, 73, 88, 90,  
95, 109, 121, 197, 216, 225, 232)

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## FACSIMILE

<p><b>To:</b> <b>Senator John Watson, Chairman</b> Senate Select Committee on Superannuation and Financial Services Phone: (02) 6277 3433 Fax: (02) 6277 3130</p> <p><b>From:</b> <b>Graeme Thompson</b> Phone: 02 9210 3100 Fax: 02 9210 3102 E-Mail: <a href="mailto:graeme.thompson@apra.gov.au">graeme.thompson@apra.gov.au</a></p> <p><b>Date:</b> <b>11 July 2001</b></p>	<p>Total number of pages (including this page): 7</p>
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You asked me yesterday about reports that the Acting Trustee appointed to replace CNA as the trustee of the small funds was charging fees of \$10,000 per fund.

The Acting Trustee is Oak Breeze Pty Ltd. It has not charged a fee of \$10,000 but has requested each fund to have a cash balance of \$10,000 to meet ongoing costs of administration and liabilities of each fund. These costs would include audit and tax return preparation, financial advisor commissions, tax payable, and APRA levies in addition to the fees of the Acting Trustee and are the normal costs that a trustee would incur. For most of the funds annual returns and tax returns were not completed by CNA for 2000 and so the Acting Trustee needs to have both the 2000 and 2001 returns completed to ensure each fund is complying. APRA intends to waive any late lodgment fees occasioned by the failure of CNA to complete the preparation of accounts and annual returns in 2000.

The individual superannuation funds will need to be complying when Oak Breeze completes its duties as Acting Trustee and moves the funds to a trustee of their choice. This is planned for 31 October 2001 when returns for June 2001 have been completed. The attached copy of a letter sent by Oak Breeze to individual funds contains some more detail.

APRA is paying for the Inspector who is assisting us in the identification of recovery actions and assimilation of evidence for actions against individuals. The appointment by APRA of an Acting Trustee does not involve APRA in the payment of administrative costs of the funds to which the Acting Trustee is appointed. Oak Breeze as the Acting Trustee is also providing APRA with any information that may assist in taking recovery actions on behalf of these funds.

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2 July 2001

Dear Fund member

«Fund» (the Fund)

## Report to Fund Members - Financial position at 31 May 2001 and update on planned acting trustee activities

We refer to our letter of 1 June 2001 and provide herein the foreshadowed updated information on the estimated financial position of the Fund as at 31 May 2001 together with comparisons for year ended 30 June 2000.

Accordingly, please find attached at Appendix A the following documents in relation to the Fund, as:

- Unaudited Statement of financial Position as at 31 May 2001- details investments, other assets, liabilities and net assets available to pay benefits
- Unaudited Operating Statement for the period 1 July 2000 to 31 May 2001 - details investment revenue, contribution revenue and expenses
- Listing of fund assets - details fund investments showing for each investment units, cost and current valuation
- Notes to financial statements - disclaimer on financial statements, description of certain asset and liability balances.

We note that the attached financial statements are unaudited and may be subject to variation. Fund members who dispute any details in the attached statements should notify us in writing, with all supporting documentation, prior to 15 July 2001.

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Also included in this report is an update on the planned activities of the acting trustee in relation to a number of issues raised by various fund members. The balance of this report addresses these issues.

### **Can I continue to make contributions to the Fund?**

Oak Breeze is continuing to operate the funds for the benefit of the fund members. Contributions can continue to be made in the normal course of fund operations.

To assist the administration of the fund we have attached at Appendix B a contribution advice form, a copy of which should be forwarded to Oak Breeze with any contribution made to the Fund. The contribution advice will detail the nature of the contribution and should minimise the existing requirement to contact contributing fund members or their employers to determine the nature of contributions.

### **What should I do with assets of the Fund which I am holding separate to the fund?**

It has come to our attention that some fund members were withholding assets from the former trustee due to concerns as to the probity of the trustee. Fund members should ensure that all assets which are the property of the Fund are now held by the trustee on behalf of the Fund.

Accordingly, we advise all fund members who are holding such assets to arrange transfer of these assets to Oak Breeze as trustee of the Fund immediately. Failure to do so could cause the Fund to be non-compliant according to the relevant superannuation and taxation legislation. The consequences of non-compliance could include significant taxation imposition.

### **Why is there a general requirement for a cash balance?**

The members of each fund were advised in our letters of 1 May 2001 and 1 June 2001, that a cash balance of at least \$10,000 (which is generally in accordance with most funds investment strategy) must be kept in the fund account to meet ongoing costs of administration and other liabilities of the fund. Fund liabilities may include rectification of non-compliance, audit and tax return preparation, financial adviser commissions, appropriate lodgement fees and any tax payable together with general administration and trustee costs.

We note that the ability to meet liabilities is dependent upon the availability of liquid monies, ie cash. Monies invested in impaired assets such as the Enhanced Cash Management Trust, Confidens Investment Trust or the Global Bank Account are not

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readily available and thus may not be considered as cash until these investments have been realised and banked to the Fund's individual bank account.

To assist you in understanding how this affects the Fund, estimated liabilities and expenses as at 31 May 2001 are provided in the attached unaudited draft financial statements of the Fund.

### **What are fund expenses?**

The attached operating statement provides details of identified fund expenses paid to date, and the liabilities detailed in the attached statement of financial position identifies expenses which have been incurred but not yet paid by the acting trustee.

Expenses are broken down into categories including acting trustee fee, administration fee, advisor fees, APRA charges, audit fees, bank charges, contribution fee, fund expenses, income tax, insurance, professional fees, superannuation contributions tax, surcharge tax, trustee fee.

As mentioned in previous reports, we are seeking waivers of fines or late fees in relation to APRA and ATO lodgements.

### **What are the acting trustee administration expenses?**

The acting trustee administration expenses have been determined in accordance with the Notice of Appointment under section 135 of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). Schedule 2 of the Notice of Appointment contains the Terms and Conditions and clauses 3 and 6 provide for payment of the acting trustee's fees and expenses in operating the funds and undertaking work to ensure they maintain their complying status.

The fees and expenses charged to each fund are based on the extent of time involved in acting as trustee and arranging for the completion of relevant administration tasks in relation to the Fund. Typically the time spent on each fund varies according to:

- extent of exposure to impaired assets
- number and type of investments
- compliance arrears and work backlogs.

The acting trustee's administration expenses to 31 May 2001 as shown in the attached unaudited operating statement relates to the following:

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- establishing the financial position of each Fund
- identifying compliance rectification imperatives
- securing the funds' investments
- initiating realisation action on impaired assets
- commencing rectification work including bringing the fund accounts up to date, arranging for funds to be audited, preparing tax returns, negotiating for non-compliance fines to be waived
- continuing the administration of the Funds, including:
  - accepting new contributions
  - undertaking pension payments where relevant
  - trading fund investments as required
- communicating with funds and APRA including correspondence, reports, meetings and enquiries
- taking actions being regarding the conduct of the previous trustee and officers including:
  - obtaining legal advice on possibility for oak breeze to hold the previous trustee liable for losses
  - pursuing the findings of the liquidator of CNA to determine the financial benefit possible from such actions
  - determining the extent that former directors may be personally liable.
  - determining the coverage of the director's liability insurance
  - assessing the former directors' personal wealth and determining the amounts that can be recovered
- examining whether there are grounds for action should any audit shortcomings be identified relating to the 1998 and 1999 reports on the now impaired assets.

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- investigating whether funds have suffered loss because of auditors, trustees or financial planners, and notifying funds should it be more appropriate for funds to take action
- pursuing avenues for government financial and other assistance in seeking redress for the losses incurred.

**Is the Trustee able to redeem assets to meet Fund liabilities?**

The ability to meet Fund liabilities as they fall due is a prerequisite of compliance and allowing continuation of the taxation benefits afforded to complying superannuation funds. If, in the Trustee's consideration, it is in the best interests of a Fund to take actions such as asset redemptions to meet Fund liabilities, the trustee is bound to take such action.

Where a fund has insufficient assets to be redeemed and the fund member has chosen not to make a contribution to allow the fund to meet its liabilities, Oak Breeze will need to consider the fund's ability to meet the compliance requirements of the SIS Act.

**When may the Fund migrate to new arrangements?**

As advised in our letter of 1 June 2001, it is intended that the funds endeavour to resolve their outstanding compliance issues as at 30 June 2001.

We shall then be writing to fund members requesting their preferred choice for the future of their Fund. At this stage, it appears the options which may be available to complying funds will include:

- appointment of a replacement trustee and fund administrator
- conversion into a self managed (ATO regulated) fund
- encashment and rollover into an approved superannuation fund
- wind-up of fund.

The acting trustee is not able to offer fund members advice as to the best course of action for each fund. Accordingly, fund members should seek their own independent advice as to the course of action which they will recommend to the acting trustee.

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**How can Fund members assist the progress of their Fund's claim for the compensation from the Minister for Financial Services?**

As advised in our letter of 1 June 2001, certain fund members have volunteered to consider how best to take Fund member concerns, regarding the losses incurred by their Funds due to the activities of the former trustee CNAL, to the Minister for Financial Services.

Accordingly, we have been asked by Mr Ken Moffitt, fund member of an affected Superannuation Fund, to include with this report a letter from him to all fund members seeking support in this matter. Mr Moffitt's letter is attached at Appendix C.

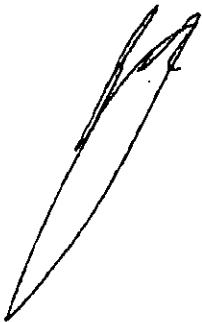
**What action has the acting trustee taken in relation to seeking assistance for the Funds from the Minister for Financial Services?**

Oak Breeze has written to Mr Joe Hockey, Minister of Financial Services, on behalf of the funds seeking Government funding to rectify the losses in the funds due to the inappropriate actions of CNAL or any other prior trustee.

In our discussions with the Minister's office to date, we have been informed that any assistance offered by the Minister is discretionary and he will be seeking input from Treasury and APRA in relation to this issue. We will keep you informed of their progress on this matter.

We will report to you again shortly as matters progress.

Yours faithfully



Peter Hedge  
Director  
Oak Breeze Pty Limited

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