

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

## **Main Inquiry Reference (a)**

**Submission No. 38**

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# Towers Perrin

5 May 2000

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

Dear Ms Morton

Thank you for the opportunity to respond to the submission by Ms Fiona Ogilvy-O'Donnell.

While there are a number of factual errors in the submission, and considering the limited time available to make a full submission on such an important and wide-ranging topic, we have focussed our response on addressing the four key points referred to in "Summary of Key Points of the Submission" provided by Ms Fiona Ogilvy-O'Donnell.

## 1. THE OCCURRENCE OF FRAUD

While organisations have the best of intentions and spend time and resources putting in place the processes and procedures to limit the opportunity for fraudulent behaviour, the reality is that it is impossible to completely eliminate the chance of fraud from any industry.

Unfortunately, unscrupulous people - criminals - are a sad fact of our society. While organisations can continue to upgrade their fraud prevention controls in anticipation of, and in response to, the actions of these people in an effort to protect their clients, their employees and their stakeholders, no one can guarantee that fraud will never occur.

Additionally, to ensure that all our clients are fully protected against financial loss as a consequence of the actions of unscrupulous people, Towers Perrin maintains fidelity insurance. This ensures, as in the case of Mr Alex Ogilvy, that no client will ever be financially disadvantaged as a result of the fraudulent behaviour of people such as Mark Cheeseman. This insurance, while protecting the financial well-being of the clients, also provides, as in the case of Mr Alex Ogilvy, immediate peace-of-mind.

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Mr Alex Ogilvy was an astute businessman who was very familiar with the safeguards and workings of fidelity insurance in instances of fraud and as a result participated in discussions with us to establish the sum of the restitution for his loss.

## 2. THE INTEGRITY OF SUPERANNUATION FUNDS

Unfortunately, no amount of regulation will ever completely eliminate the risk of, nor occurrence of, fraud. In Australia, we have a legal and regulatory system which has been put in place to dissuade criminal action such as fraud. Yet, we continue to see evidence of unscrupulous behaviour in all industries and sectors.

To put in place additional regulations against the occurrence of fraud will, in all probability, disadvantage the honest majority, as they are likely to impose greater costs on the management and administration of those funds, which in turn are passed onto the individual investor. Unfortunately, it appears that unscrupulous individuals seem happy to flaunt laws and regulations, regardless of the extent or the severity of their sanctions.

The true protection for the integrity of individuals' superannuation funds comes from an organisation's commitment to treat their clients in a fair, considerate and reasonable manner, and their ability to guarantee that, should a crime be committed, they will receive full restitution.

When Mark Cheeseman's fraudulent behaviour was discovered in December 1996, we:

- acted promptly to identify the facts
- vigorously pursued an internal investigation that led to the arrest of Mark Cheeseman
- alerted the police and assisted them in their investigation
- appointed an independent auditor to fully investigate the circumstances surrounding the fraud
- made every effort to ensure that Mr Alex Ogilvy was aware that Towers Perrin intended to provide full restitution for his loss.

Mr Cheeseman was subsequently sentenced to a four-year goal term for his crime.

During all our dealings with Mr Alex Ogilvy, his beneficiaries and their lawyers we offered full restitution. Further, we provided Mr Alex Ogilvy with an interest free loan upon request to assist him with an immediate financial need.

These actions, together with the fidelity insurance we maintain, ensured that Mr Alex Ogilvy was not at risk of financial loss.

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### 3. ENCOURAGE A SPEEDY RESTITUTION OF DEFRAUDED SUPERANNUATION FUNDS

Like Mr Alex Ogilvy, we wanted a speedy resolution of the matter and we worked towards that. Unfortunately Mr Alex Ogilvy passed away on 23 April 1997. Subsequently his Executors rejected the calculation of restitution as offered by Towers Perrin and proceeded with legal action. An independent expert appointed by the Court subsequently ratified the Towers Perrin calculation. In any event, a confidential, mediated settlement was reached between Towers Perrin and the Estate of Mr Alex Ogilvy on 9 March 2000 and payment has been made in accordance with the settlement.

We believe that the actions open to the Government to ensure a speedy restitution of defrauded superannuation funds will be necessarily limited, as in this case, by the proper course of a police, legal and insurance investigation, due legal process and the rights of the individual investor (or in this case his Estate) to pursue what they believe to be appropriate restitution.

Even if it is possible to develop a reasonable and fair "speedy" remedy, this will not guarantee that the recurrence of fraud is totally avoided.

### 4. RECOMMENDATIONS

We are in favour of, and will support, recommendations that remove the burden for all victims of crime. However, in assessing recommendations and developing regulations, the Government must also consider the cost to be borne by the honest majority.

Over-regulation of the industry is not the answer.

An important safeguard for industry participants should be a requirement to maintain fidelity insurance to ensure that no client will ever be financially disadvantaged as a result of the unscrupulous behaviour of criminals.

Towers Perrin regrets that the incident ever occurred. We take seriously our role with and responsibilities towards all clients, recognising that in many cases our professional involvement with them relates to sensitive and confidential financial issues.

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At all times we were sensitive to the stress caused to Mr Alex Ogilvy as a result of the fraud, making every effort to ensure that he was not financially disadvantaged by the incident.

Towers Perrin is pleased that settlement for the full restitution has been achieved. Please note that we, Mrs Fiona Ogilvy-O'Donnell and other members of Mr Alex Ogilvy's Estate are bound by the confidentiality provisions within this settlement agreement.

However, while organisations can put in place processes and procedures to limit the opportunity for fraudulent behaviour, in reality, it is impossible to totally eliminate the chance of fraud.

Yours faithfully



David Solomon  
Managing Director, Australia