

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

**Main Inquiry
Reference (a)**

Submission No. 43

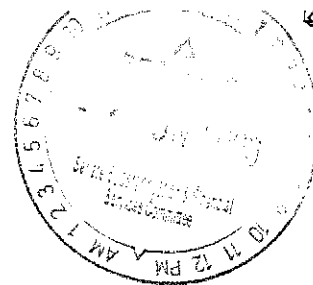
Submittor: Mr Geoffrey Heaton
Company Secretary/Resort Manager
Voyager Resort Ltd
PO Box 71
Broadbeach
GOLD COAST QLD 4218
☎ - (07) 5538 7833
📄 - (07) 5592 2135



VOYAGER RESORT LTD.

"Overlooks Pacific Ocean - Monorail to Casino"

ACN 010 547 618



Select Committee on Superannuation
& Financial Services
Department of the Senate
Parliament House
Canberra ACT 2600



Public Hearing - Brisbane 16th June 2000

I have pleasure in confirming my appearance at the hearing, scheduled for 11.00am

Terms of Reference

Prudential Supervision and Consumer Protection for Superannuation, Banking and Financial Services.

Submission

My submission relates specifically to superannuation, and our experiences with Epas Superannuation Ltd.

History

Our Resort joined Epas Superannuation Fund in 1989 and employer contributions at 3% gross wages were forwarded monthly.

Initially 13 employees were joined to the fund, which later grew to 26 in 1998 when contributions were 7% of gross wages and totaled \$29,124 for the twelve months to 30/6/98.

Concerns

Our first concerns were raised in 1995 when the returns began to dip;

Year Ending	Return %	CPI %
1993	9.75%	2.3%
1994	10.5%	1.7%
1995	8.00%	4.5%
1996	9.00%	3.1% - APRA appointed Gerald Parker 1/7/96
1997	4.25%	0.25%
1998	-43.00%	0.7%

167, Old Burleigh Rd, Broadbeach, Gold Coast, Qld. 4218, P.O. Box 71, Broadbeach
Telephone: (07) 5538 7833 Fax: (07) 5592 2135

RECEIVED TIME 1. JUN. 15:42

PRINT TIME 1. JUN. 15:46

APRA we believe recommended the appointment of Gerald Parker as Trustee, to diversify the fund from its high proportion of investment in property.

Attachment marked "A" is a copy of an article which appeared in the Sunday Mail on 7th February 1999, and appeared to support our "lack of confidence" in the direction Epas Superannuation was headed.

In August 1997 our Resort began to look closely at the structure of the fund and for several months made consistent calls to Epas Superannuation Fund Office, seeking member statements/reports for the year ended 30th June 1997. We were told

- (I) The trustees do not have to issue member statements until 31st December each year.
- (II) The trustees were examining the financial reports to maximise member returns. The Statements were issued between 22nd & 28th December 1997 and confirmed our concern – that the fund was not being operating professionally. Our Resort decided to stay with Epas, as that we were already halfway through the financial year and the Federal Government had set 30/06/98 as the deadline for 'Choice of Fund' legislation.

From January 1998 we made many enquiries regarding the operation of the fund, to Employees of the Epas Superannuation Fund, and to APRA staff, both Sydney & Brisbane, and independently with people in the industry.

There appeared to be many property deals associated with the fund that were questionable business deals.

1. O'Haras Resort – Launceston

The manner by which Epas Superannuation obtained the Resort appeared to us to be a transaction lacking good advice, reasonable valuation and involved vendors personally well known to the trustees.

The continued pouring of liquidity (to a total of \$7million) from the Superannuation Fund was, in my opinion, reckless at the best.

2. Browns Plains – Industrial Land

During enquires / investigations into the dealings of the Fund we were told that the purchase of an industrial land property in Browns Plains was inflated by \$2.5 million. The market value being \$2 million, purchase price \$4.5 million paid by Epas. The information we received was that a [REDACTED] had been able to 'acquire' a valuation for in excess of actual market value at a cost of \$30,000 (cash)

All enquires regarding any of these matters addressed to Mr Parker were given the same reply 'Commercially Privileged Information'.

When the same issues were addressed to APRA, both Brisbane & Sydney, they confirmed that the reply 'Commercially Privileged Information' was adequate.

Management Fees

The fund paid 'Asset Management Fees' in 1997 of \$450,000 and in 1998 \$535,000 to Mr Terry James, the founder of the Fund, and Trustee at that time. All enquires as to 'why', and what basis was used to evaluate the payments were unanswered by the trustees.

Consultancy Fees

Mr Parker received in addition to his trustees salary, consultancy fees of 1997 \$34723 and 1998 \$2902. We were unable to ascertain what these payments represented.

Summary

The freezing of the fund on the 30th June 1998, and the resultant negative 43% impact on Members contributions was a direct result of the [REDACTED] behaviour of the trustees of the fund.

There is no doubt the present action in the Supreme Court Brisbane taken by Australian Securities and Investment Commission will uncover further irregularities in the funds operation.

Our Recommendations

1. Superannuation Funds must have accredited investment advisors, licensed as financial planners and with a dealers license or accreditation that makes them liable for investment decisions.
2. The powers of trustees to carry on the business of a superannuation fund, with vast liquid assets must be examined and greater emphasis on accreditation of trustees considered.
3. Members of Superannuation Funds should have a greater say in the manner by which the funds are conducted – the same way shareholders of a company have input at Annual Meetings ect, with elections of office bearers etc. At present the members only receive Annual Statements.
4. The reply to a members questions of 'Commercially Privileged Information' should be treated as a criminal offence!
5. APRA's powers of intervention in the investment decisions of a trustee appears inadequate, and does not give you much confidence about the strength/powers of APRA
 Certainly during our endeavours to discover what happened to EPAS, APRA was less than informative or co-operative. In fact in an interview screened by the 'Money Show' on Channel 9 in July 1999 the head of APRA told Paul Clithero – "They are only small fish in a big pond" – in reference to members of Epas Superannuation Fund.
6. Letters to Senator Kemp, the Assistant Treasurer – Joe Hockey Financial Services minister received a reply – see attachment marked 'B'
 - that confirmed
 - (i) trustees powers were far too autonomous especially when many have little investment accreditation.
 - (ii) The lack of effective control by APRA

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Conclusion

Thank Goodness Senator John Watson took these matters seriously, and his speech to the Senate (Hansard 22-09-99) was most precise, detailed and informative. I am certain it created greater awareness with ASIC & APRA on the need for action against the trustees of Epas Superannuation Fund.

As our Country heads toward a self funding retirement, we can only hope for better controls are legislated to protect our nest eggs.



Geoffrey Graeme Heaton
Company Secretary / Resort Manager
Justice of the Peace

Super funds under cloud

AUSTRALIA'S superannuation watchdog has received a complaint about the troubleshooter it put in charge of some of Australia's problem-ridden funds.

Documents show the Australian Prudential Regulation Authority last year recommended the man run the funds, even though queries about him had been raised in January 1997.

Some Brisbane officers at the authority have been accused of having too close a relationship with the man.

Concern has been raised with the APRA about the man's handling of key positions with two Queensland super funds servicing the legal fraternity: The Queensland Law Society Inc Superannuation Fund and the \$18 million Law Employees Superannuation Fund, comprising 5000 members employed with legal firms in Queensland.

Documents supplied to The Sunday Mail indicate that in January 1997 a Gold Coast member of one of these funds asked APRA's predecessor, the Insurance and Superannuation Commission, to clarify if the man and an associate were deriving financial benefits from their association with the fund.

Despite the questions, APRA last year selected the troubleshooter's company ahead of other con-

By CHRIS GRIFFITH

tenders as acting trustee of three problem-ridden superannuation schemes.

Documents indicate the man was asked to resign his position with the Queensland Law Society fund after society solicitor Scott Carter reviewed the fund.

The man also is embroiled in resolving the late supply of members' benefit statements and the annual report of the second fund.

The man categorically has denied any responsibility for problems in either fund, and denies ever receiving any benefit by way of related party dealings.

APRA's chief manager, superannuation, Keith Chapman, said that for legal reasons he could not say whether the man was under investigation.

Nor could he comment about claims of alleged closeness between the man and APRA's Brisbane office.

He could not say whether APRA was aware of previous queries about the troubleshooter when it appointed him to three funds last year.

But Mr Chapman did confirm that the troubleshooter still was acting trustee of the three funds.

Mr Carter would not comment.

Asian c

A FOUNDING member of a notorious crime gang was shot dead as he walked through the door of a western Sydney hotel.

The murder of Bo Van Le outside the Cumberland Hotel in Bankstown on Friday night was the third suspected execution of a ST gang member in four years.

Police said Le, 29, was approached by a man of Asian appearance at the hotel front door about 8.45pm and was shot several times in the head.

Le, a Cambodian,

Answer equipment

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Attachment "B" 1

2 JUL 1999

ASSISTANT TREASURER
PARLIAMENT HOUSE
CANBERRA ACT 2600

Telephone: (02) 6277 7340
Facsimile: (02) 6273 3420

Ms Margaret May, MP
Federal Member for McPherson
PO Box 3336
Robina Town Centre
Queensland 4230

Dear Ms May

A handwritten signature in cursive script that reads "Margaret".

Thank you for your letter of 19 February 1999 to the Hon Joe Hockey, MP regarding Mr Geoff Heaton's concerns in relation to the performance of the Employees Productivity Award Superannuation Fund (EPAS). As Mr Hockey is currently overseas, I am replying on his behalf. In his letter Mr Heaton requested your assistance in regard to, among other things:

- (a) Ascertaining from the Government the position of members who have suffered losses
- (b) Investigation to avoid such occurrences in the future.

I offer the following comments by way of clarification of the issues raised by Mr Heaton:

(a) Ascertaining from the Government the position of members who have suffered losses

The Government regulates the superannuation industry under the *Superannuation Industry (Supervision) Act 1993* and other related legislation (the SIS legislation). A central principle of the SIS legislation is that trustees are primarily responsible for the viability and prudent operation of superannuation funds. Subject to various 'checks and balances' contained in the SIS legislation, trustees are given considerable autonomy. This enables funds to operate on a commercial basis and to seek to achieve long term investment returns which will enhance the retirement incomes of all fund members.

(b) Investigation to avoid such occurrences in the future:

With one or two minor exceptions, the superannuation industry is not constrained in the manner in which it can invest – this is in recognition of the fact that to achieve high long term investment returns investments need to be 'managed'. Allowing investment management requires an acceptance of discretion by those responsible and, inevitably, some discretionary decisions will be wrong. A balance needs to be constantly maintained between high(er) long term returns and controls around the extent of discretion. The SIS legislation imposes fiduciary duties on trustees to act in the best interest of the members of the fund.

The Australian Prudential Regulation Authority (APRA), as part of its responsibilities, continually emphasises to fund managers and trustees that the important consideration is the combined effect of the mix of investments when considered against the objectives of the fund. In the specific instance of EPAS, the Insurance and Superannuation Commission (APRA's predecessor) had pointed out to the trustee the need for careful consideration being given to the investment strategy. Following this the trustee did decide to increase its diversification of assets.

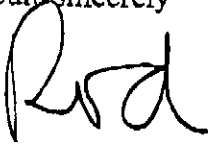
The SIS legislation obliges all trustees to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the fund, including the risk involved in its investments, having regard to its cash flow requirements and its objectives, and the risks of inadequate diversification.

There will be occasions when some funds will suffer negative growth without necessarily endangering the long run objectives of the fund, but there is an obligation on trustees to consider how effectively their strategy is being achieved, and review the strategy periodically. The trustee of EPAS has advised APRA and ASIC that it is currently undertaking a review.

I understand that Mr Heaton has been in touch with APRA and the Australian Securities & Investments Commission (ASIC) who are responsible for market disclosure and member complaints and these agencies have responded to him.

I trust that this information is of assistance.

Yours sincerely



ROD KEMP