

Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a)

Submission No. 44

Submittor: Mr Alan Beaton
South Australian State President
Association of Independent Retirees
Inc.
60a Birksgate Drive
URRBRAE SA 5064
 - (08) 8379 9480
 - (08) 8379 0232

61 8 8397 0232



POSITION PAPER

TO

MEMBERS OF SENATE SELECT COMMITTEE

ON

***PRUDENTIAL SUPERVISION/CONSUMER PROTECTION
FOR SUPERANNUATION, BANKING, AND
FINANCIAL SERVICES***

***PRESENTER – ALAN BEATON, SOUTH AUSTRALIAN STATE PRESIDENT OF THE
ASSOCIATION OF INDEPENDENT RETIREES INC.***

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These comments represent the concerns, views, rationale and logic expressed by members of the community at large who regard themselves as 'key stakeholders' in the composition, implementation and observance of the Finance Industry Reform Bill's provisions.

The finance industry in Australia does not currently enjoy high public regard or profile. The government cannot therefore be oblivious to the danger or the need to put in place adequate regulatory and preventative measures to protect citizens whom it increasingly encourages by way of legislation towards self funding of retirement income.

A.. Benton ,S.A. Division for and on behalf of the Association of Independent Retirees Inc. 15/6/2.

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POSITION PAPER
Presented By Alan Beaton-For A.I.R.

TO MEMBERS OF SENATE SELECT COMMITTEE
ON
PRUDENTIAL SUPERVISION AND CUSTOMER PROTECTION ETC.

Introduction

Submission prepared by Alan Beaton in the capacity of President of the South Australian Division and National Councillor of the Association of Independent Retirees Inc. charged with the responsibility of policy development on the issue of protection of invested funds of A.I.R. members and Retirees at large .

Presentation

The government's initiative in formatting a Draft 'Financial Services Reform Bill' is endorsed by the Association of Independent Retirees Inc as a promising beginning towards a process of regulation that will hopefully result in the imposition of effective controls on the finance industry and the provision of social justice protection for consumers . The association respectfully urges the Select Committee to **consider the inclusion** into the 'Bill', provision or provisions that will facilitate the direct recovery of investment funds which have been misappropriated by registered members of the finance industry .

- 1. It is contended by the Association's National Council that the Bill to be introduced into Parliament later this Year is deficient in that it makes no positive reference to the **most critical element** of financial industry regulation which is and will continue to be the recovery of capital defrauded through deliberate illegal action by a growing number of members of the finance industry and others empowered to receive investment capital .
- 2. While the Government's proposals substantially strengthen the existing licensing and disclosure regime they do nothing to ensure that the finance industry faces up to its **'duty of care'** to ensure that provisions are in place to directly restore capital defrauded by its members and /or representatives .
- 3. Direct involvement with the consequential effects of fraudulent misappropriation of invested capital from mostly **elderly members of the community in all States** leads to inescapable and verifiable conclusions that :-

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- **ASIC is not currently structured** or empowered to initiate direct action to restore equity to defrauded community members even in circumstances where there is irrefutable evidence and in some cases admission of illegal action .

- Where there is evidence of illegal action by individuals within the finance industry , ASIC refers the matter to a **Police Special Task Force** for follow up action . The result of Police intervention is usually prosecution with no power whatsoever to enforce the recovery of misappropriated funds .

- Both organisations , **ASIC and the police** do a most credible job of tracing and locating misappropriated capital and identifying and apprehending those responsible for illegal acts but **take no direct action to restore misappropriated capital** .

- The obvious and inescapable conclusion must be that penal powers are not currently directed at the recovery of defrauded investor capital and to some extent are inadequate and may even encourage white collar crime .

- In such circumstances the only avenue left to those who have lost investment capital through the criminal activity of some financial advisors, mortgage agents , professional service providers such as lawyers , accountants etc is loosely described as 'Civil Action'; an undertaking that is invariably futile , costly , protracted and damaging to the health and well being of elderly victims who are demonstrably the pray of a minority ; but a damaging minority of financial practitioners .

- The so-called option of Civil Action 'is a nonsense when it is considered that the legal machinery existing to pursue such cases does not operate without a liberal and indeterminable cost impost ; a factor that often precludes concluding action being initiated because victims are unable to meet legal costs .

- Without laboring the issue , those who are unscrupulous enough to deliberately target the elderly and rob them of their livelihood at a time of life when restoration through work is not an option , usually squirrel away defrauded capital into family trusts which are inaccessible in most civil action cases for recovery or resort to the easily availed of escape from liability stratagem of bankruptcy .

- We urge this Select Committee to observe that the social entitlement which should be available to all citizens where illegal action is provable is simply not evident within the financial regulatory system as it exists or within the legal regime which should have the capacity to provide relief to those who have done no wrong except to put their trust in a financial system that may not currently warrant such trust .

A.I.R.'s Recommendations:

- The finance industry be obligated by a provision in the Finance Services Reform Bill to enforce participation in a contributory **Default Indemnity Provision Fund** to be administered by the government as a first preference , specifically for the purpose of restoring equity to those defrauded by members of the industry in established circumstances such as misappropriation or other criminal activity .
- Consideration be given to the imposition of a 0.25 % [or otherwise appropriate levy] on all financial industry transactions payable jointly by those seeking the protection of the referred indemnity fund and all those dealing with public funds at the retail level.
- This would provide a funding source for the government to administer the Indemnity Fund . A Government Agency , [A.S.I.C. or otherwise] should be the independent regulator to the exclusion of finance industry control .
- Such a form of insurance would be welcomed by the aged community which is bearing the brunt of the currently endemic spate of finance industry fraud : an unfortunate social aberration that will become more severe as the government's policy towards self funding of retirement income begins to impact more forcibly on those who receive unaccustomed financial sums in superannuation entitlement . Such 'bait' is sure to attract predators and must be guarded against .