



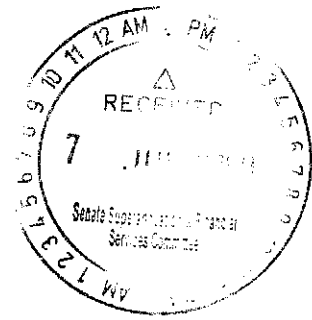
Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a)

**Submission No. 56 (Supplementary to Submission
No. 48**

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4 July 2000

The Secretariat
Senate Select Committee on Superannuation
And Financial Services
SG64
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

Superannuation and Financial Services

I refer to the hearings of the Senate Committee in Brisbane on 16 June 2000 and wish to make further submissions.

I have read Submission No 43 by Mr Geoffrey Heaton of Voyager Resort Ltd and second his recommendations 1, 2, 3 and 4. I would qualify No 4 by submitting that the legislation be amended to compel a trustee to answer requests.

Additionally, I make the following submissions:

1. that employers not be trustees or directors of trustees of a fund given that the assets of the funds are the property of the employees and the employers have no interest in them;
2. there be a Code of Ethics/Conduct for trustees similar to that governing professional bodies eg lawyers, doctors, engineers, pharmacists etc with punitive provisions for breaches;
3. professional indemnity insurance for trustees should be mandatory;
4. from my reading of the legislation I cannot see any guidelines as to the types of investments. In Part 6 Section 52 the covenants governing investments are very wide to allow for diversification of investments but should give more guidance as to the types of investments such as those in the provisions of the *Trusts Act* (Queensland) governing authorised trustee investments. Strict guidelines should be provided in relation to lending/investing moneys belonging to a fund in real estate ie:

- first registered bill of mortgage;
- independent valuation to be commissioned by the relevant fund at the expense of the borrower;
- mortgage loan insurance;
- debt to equity ratio (ie no more than 75-80% of total value to be advanced); and
- generally the type of requirements that major banks have in place.

The legislation should also provide that smaller funds do not engage in direct lending and that for all funds a limit be placed on the percentage of the fund's total assets to be invested in direct loans. In the case of LESF a defaulting loan was in excess of 5% of the total assets of the fund which appears to be an extraordinarily high figure for a single investment which could, as was the case in our Fund, be at risk;

5. that time limits be placed on:

- answering complaints/inquiries should be reduced from 90 days as presently in the legislation to 30 days. In the case of LESF where there has been a defaulting loan but very little information provided in the Annual Report. We have had a time lapse of approximately 13 months from the time when the loan was declared to be in default before we have any substantive information (which to date has not been received) about what happened and how it happened;
- delivery of benefit statements and annual reports. In the Act there is mention of '*prescribed period*' but I cannot find any definition of that term. From my inquiries I have ascertained that it is 31st December following the relevant financial year. This I submit should be reduced to 3 months. In the case of LESF the benefit statements for the 1999 financial year were received at the end of January 2000 and the annual report on or about 8 April;

6. investments that are not at arms length (ie a trustee investing in itself or related persons/entities) should carry a criminal penalty and not the civil penalty as at present namely Part 12, section 109 - investments to be made at arms length provide for a civil penalty whereas Part 7, section 68 (Victimisation of Trustees etc) provides for a criminal penalty - imprisonment for 2 years. Surely a trustee

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investing in itself or related parties or entities is or could be perceived as fraud and a greater offence given that it is in a position of trust and its actions impact on a greater number of people, possibly to a greater detriment. Trustees of superannuation funds must surely be governed by the same standard as that expected of politicians and policemen who commit breaches of trust in carrying out their duties. The courts have consistently found a higher standard is expected from politicians and members of the police force and I submit exactly the same standard be expected of trustees with the resultant higher penalties;

7. loans/borrowing that not at arms length should be declared invalid and immediately called up and not be allowed to stand as at present under the Act;
8. restraint on a trustee or related persons/entities of one fund borrowing from another as collusion can occur and, on the face of it, transactions which appear to be at arms length in reality aren't. Penalties for this should also be the criminal penalty ie imprisonment;
9. provision in the Act for members to elect directors of trustees and to be in full possession of all facts before called upon to elect directors - ie if a fund has performed poorly it should be communicated to members before any vote is cast;
10. public meetings of trustees where members can ask questions and trustee is compelled to answer and not hide behind answers such as *commercial in confidence*;
11. that terms of office of directors be limited to 1 year.

With respect to the legislation itself I found it to be very complex and confusing. I have spent over 30 years working in legal offices and therefore have had occasion to read parts of various Acts on many occasions so I consider I probably would find it easier to comprehend legislation than others who have not had the same experience.

Given that the legislation affects almost every worker and governs the handling of some \$415 billion at the present time, I think the legislation should be amended to make it simpler and easier to read. There would surely be a number of trustees of a superannuation fund who are not sophisticated and who would find it helpful to have a small handbook or pamphlet type synopsis of the Act which included a number of heads such as *Duties of Trustees*, *Breaches of the Act* (with penalties for breaches included) and *Authorised Investments* with dot points under each heading giving a brief description of each eg:

Duties of Trustees

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- APRA annual returns to be lodged by 31 December in each year;
- keep minutes and records;
- keep a complaints register;
- keep accounts and audited statements.

Authorised Investments

- first mortgage of real estate;
- shares in companies listed on the Australian Stock Exchange;
- shares in companies listed on international stock exchanges;
- moneys on deposit with banks and financial institutions.

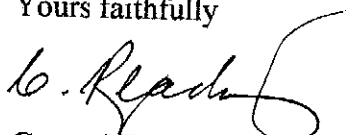
Breaches of the Act

- victimisation of trustee - penalty 2 years imprisonment;
- failure to keep complaints register and answer inquiries within 30 days - penalty fine not exceeding 100 penalty units. (From my inquiries I have ascertained that a penalty unit is \$110. Should not the dollar amount be inserted after the number of penalty units - eg a penalty unity is \$110);
- failure to keep minutes and records - fine not to exceed 50 penalty units (\$5,500);

and then referring to the relevant section in the Act.

I thank the Committee for the opportunity of appearing before it and commend it for its work in this area.

Yours faithfully


Carmel Reading