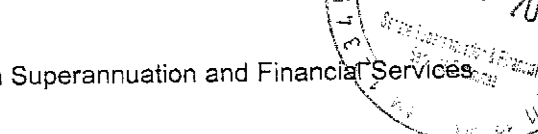
Senate Select Committee on Superannuation and Financial Services

Main Inquiry
Reference (a)

Submission No. 57

Submittor: Mr Pat Hannan
10 Lewis Street
CLAYFIELD QLD 4011
☎ - (07) 3857 7648
🖹 -



From: Pat Hannan [phannan@gil.com.au]
Sent: Tuesday, 11 July 2000 10:59 AM
To: Senator John Watson
Subject: Submission to Senate Committee on Superannuation and Financial Services

SenWatson sub.doc

Dear Senator,

Further to our meeting at the Public Hearings held in Brisbane on 15/16 June and our telephone conversation two weeks ago, I submit some brief comments on prudential supervision and consumer protection for superannuation, and financial services.

I apologise for the delay and hope these comments are of use. If you would like me to expand on any area, or be more specific in my comments, I will be happy to do so.

Kind Regards,

Pat Hannan

PAT HANNAN

10 Lewis Street
Clayfield QLD 4011
Ph: 3857 7648
Mobile: 0411 277 638
Email: phannan@gil.com.au

10 July 2000

Senator John Watson
Chair
Senate Select Committee on
Superannuation & Financial Services

Dear Senator,

SUBMISSION TO COMMITTEE SUPERANNUATION & FINANCIAL SERVICES

Further to your approach at the recent Public Hearing in Brisbane on 16 June 2000, I would like to submit my views to you for consideration. My apologies for the delay.

I believe my credentials and performance as State Manager of, firstly the ISC, then APRA, from their inception here in Queensland, and my leadership as State Manager during very difficult periods of regulatory challenge, render my comments worthy of consideration. I am more than happy to discuss individual cases and expand further upon the views I put before you here in this paper if you so wish.

I have recently been asked to act as preliminary Chair of a Committee of interested parties being formed to act as a vehicle for the promotion of the interests of members of superannuation funds – not all members are represented in the current system adequately in my view! I would like to discuss that with you if you are interested given the positive input such a vehicle may be able to have with the Senate Select Committee.

In my views here I have tended to leave out the "flavour" that inevitably enriches and helps to explain some factual subject matter and events, and I have also abbreviated my submission to as close to "dot-point" form as I can. I know the Committee must be inundated with reading material and, as I have said, I can expand on matters at the Committees discretion.

I will not comment in detail on the ATO responsibility in Matter (C) – enforcement of the Superannuation Guarantee Charge. I think the ATO could regulate a lot more effectively in this area (I think they think so too!) and I would draw on my experience to lay down a more effective platform for regulatory activity than the one they currently appear to be following. I cannot speak with as much authority on this subject however, so I will leave it alone.

Neither can I speak with authority on all of the aspects that effect the opportunities and constraints for Australia to become a centre for the provision of global financial services. It seems to me that there are many dimensions to that question. I will put the view that getting the right balance in our regulatory regime is a very important factor in the equation. Whilst market failure plays a part in driving regulation, a Government's failure to accommodate legitimate and positive market forces is equally negative and damaging. I suppose my

comments, which are meant to be positive, are aimed at putting in place a more effective regulatory regime that accommodates this duality of interests.

OVERVIEW

We need / have to have a superannuation system and the one we have is sound and efficient from a macro perspective in my view.

There is no doubt that the Wallis Enquiry did a very good job of improving both the practical and philosophical approach to regulation in the financial services industry. It recognises the assimilation of the plethora of "financial services" and the trend for the industry to broaden their view of "core business" activity and, to a degree, move toward a "one-stop-shop" approach. Whilst I acknowledge the improvements I also think there is a way to go and Stan Wallis himself would have envisaged a continuing improvement program and continuing refinement approach to the system.

PRUDENTIAL SUPERVISION & CONSUMER PROTECTION

- The lines here remain blurred. If the consumer / fund member / the industry / the regulators get confused there is a problem that needs to be fixed – perhaps a "one-stop shop" is required here too for the regulator?

- The philosophical approach of the regulators (I have played a major part in both the ISC/APRA & ASC/ASIC) is quite different and the operational approach of the organisations is markedly different. This is not fair to consumers/industry. The purportedly "gung-ho" enforcement oriented approach of ASIC is quite different to the more conciliatory industry oriented approach of APRA. Let me be quite clear – both strategies have their place – it is unfortunate that one or another style dominates the particular organisations because the truth is, both are needed from time to time to deal with the job at hand! The superannuation industry for the most part needs, and responds better to, a "partnering" approach by the regulator. However, a big stick is needed sometimes and the regulator needs to have the determination to use it!

- I believe the ACCC have a very effective approach to regulation and community opinion would support this. There is certainly the question of leadership and media management to consider, but the underlying commitment is transparent in the ACCC.

- Directorship / Trusteeship / Stewardship. When the issues of most significant concern found through audit/inspection activity were annually evaluated within ISC/APRA "poor" Trusteeship topped the list. Ignorance, whether it be innocent or mischievous, remains the greatest problem and threat to members superannuation benefits. I have no doubt the same concern exists with stewardship responsibility across regulatory jurisdictions.

Equal representation, generally speaking, does **NOT** work. The theory is great and certainly in some of the biggest funds it is sincere and it is effective. Granted there is huge membership covered by these funds. But the "squeaky wheel" syndrome will ensure that through the larger middle sized and smaller funds the failure of equal representation, and the failure of Trustees to fully understand and accommodate their responsibilities for the prudent management of members benefits, will continue to cause concern to the regulator and Government (and members!).

On many many occasions I found the employee representatives to be ineffective. It is easy to understand – what must they protect, their jobs or their super (and that of their colleagues). An unreasonable employer, and they do exist, will ensure that the objectives of the employer are foremost in the considerations of the Trustee body. Many employers, and sadly many trustees, still believe that superannuation moneys are assets of the employers!

The answers lie in two areas - Education & Penalty. Trustees of Funds with xxx number of members and/or $xxx **MUST** be qualified. (A special qualification/course would be easy to put in place, would be fully supported within the industry, and would be a great start! It does not need to be expensive and I have, with involvement from expert colleagues, given thought to the content of such a course.) Qualifications need to renewed annually – an important requirement. You cannot act as a Trustee without such qualifications and significant penalties must enforce this key requirement. The very sensitive issue of investment by superannuation funds should be covered in the education here – I deal with this subject further below.

I have used the word penalty purposefully, and the penalty should be significant and aimed at the individual, and not in circumstances where the Trustee can plunder the reserves of the Fund in legal action attempting to "protect" themselves! Members should not pay twice for incompetent Trustees!

INVESTMENT ISSUES

- Where there is no straight fraud or misconduct it is inevitably the investment area where Funds get into trouble. It is certainly the area that causes the regulator most heartache. The Government has, quite rightly in my view, given Trustees the power to invest as they see fit within the loose "prudent person" parameters and the limited and inadequate regulatory guidelines set out in the legislation. Essentially Trustees can give consideration to the guidelines and then do what they think is right – read – do whatever they want!

- If the government does not want to tighten up the investment restrictions area, and I am not convinced that they should, the only way to address the issue is compulsory education. I have outlined how that would fit in the comments above.

I will not comment individually on many of the cases we have dealt with in Queensland – many resulted in sad outcomes for members despite our best efforts. We broke new ground in many areas and uncovered many many problems and issues for the regulator to deal with, largely because I was blessed with excellent staff, with commercial experience and a deep commitment to protect the interests of members!

Some cases are before the courts, and I certainly hope the TRUTH comes out in these cases in the end. To comment on those that are not before the courts I would have to occasionally pass comment from a Regional State Manager's perspective on a failure by a "Central Office" to support State operatives when serious problems are identified, and an even greater tendency to desert them when the going gets tough! I am not sure that will achieve anything. Suffice to say the "altitudinal amnesia" that seemed to grip my colleagues from Canberra, and later Sydney, when the returned home on the aeroplane caused an ineffectiveness that could have been avoided with greater trust, fortitude and commitment.

Please let me know if you require any further advice.

Regards,

Pat Hannan