

Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a)

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(Supplementary to Submission No. 11)

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ASIC

Australian Securities & Investments Commission

14 December 2000

Ms Sue Morton
Senate Committee on Superannuation & Financial Services
Parliament House
Canberra ACT 2600



Dear Ms Morton

I refer to the appearance by ASIC representatives before the Committee at a hearing held on Tuesday 17 October 2000. As you will recall, the ASIC took some questions on notice during the hearing. The following provides additional information in response to those questions:

1. Complaints statistics over 12 months recording matters by service provider and type of industry (page SFS 786 of Hansard transcript)

Since acquiring its augmented jurisdiction in July 1998, ASIC has recorded 1839 financial services industries consumer complaints (to the period 30 September 2000).

During the financial year ending 30 June 2000, the majority of complaints were made against superannuation advisers and trustees (141). The second largest category was against insurance intermediaries (agents and brokers - 116), followed by life and general insurance companies (103), and then banks, building and friendly societies and credit unions (54).

In the first quarter of the current financial year (to 30 September 2000), the order has been reversed, with life and general insurers (67), and insurance intermediaries (58), outnumbering superannuation trustees and advisers (45). Banks and other financial institutions remained in fourth place (18).

These statistics should be treated with some caution. The statistics do not include matters relating to managed investments. Furthermore, recent ASIC activity in the e-commerce area (share trading programs or "get rich quick" schemes), are not captured by these statistics because they form part of ASIC's continuing jurisdiction in relation to securities and general Corporations Law matters. To that extent, it is recognised that the statistics are somewhat understated.

2. Prosecutions or actions taken by ASIC in relation to banking and superannuation over the last 12 months (page SFS 786 of Hansard transcript)

Westpac Enforceable Undertaking – Westpac undertaking to ASIC to address two central concerns; namely, the disclosure of remuneration and the nature of Westpac's advisory services and secondly, the adequacy of Westpac's compliance system.

Suncorp Metway Enforceable Undertaking – an independent compliance consultant will review, monitor and report on the company's compliance with license conditions.

Beneflex Retirement Plan - prosecution for false accounting and misappropriation of member funds. Outcome was a custodial sentence for those responsible.

Sentinel (Victorian based financial services group) - prosecution for fraud in the misuse of superannuation funds exceeding \$4million for personal gain. Outcome was gaol sentences for those responsible.

Houghton & Associates - prosecution for misappropriation of \$1.3million in clients' superannuation funds. Outcome was a custodial sentence, plus Prudential and Mercantile Mutual agreed to restore the funds.

Michael Camilleri (Melbourne based investment adviser) - prosecution for theft of superannuation funds. Outcome was a gaol sentence.

Ronald Stanley (Dandenong based insurance agent) - prosecution under Superannuation Industry (Supervision) Act 1993 for theft and dealing in regulated funds. Outcome was a suspended gaol sentence and restitution ordered.

Greenacres Management Pty Ltd - charges to be brought for misuse of members' funds. Those responsible have been committed for trial.

In relation to civil matters:

EPAS - public interest proceeding being undertaken against EPAS, the trustee directors and former auditors, to recover \$10 million.

Nightingall - civil action for injunctions restraining unauthorised dealing in regulated funds. Interim injunctions ordered, with matter to be returned to Court for final orders including compensation to be paid to consumers.

FABAL - enforceable undertaking obtained by ASIC, arising from disclosure and complaints handling defects, which entails a supervision and compliance regime for the trustee directors.

Connelly Temple - enforceable undertaking obtained in relation to potentially misleading point of sale material.

TWU - proceedings commenced alleging misleading and deceptive conduct by trustee of the TWU Super Fund, with applications for declarations, injunctions and mandatory orders for corrective notices and advertising.

3. Poor Trustee Practices (page SFS 788 of Hansard transcript)

From ASIC's perspective, the main area of poor practice by trustees relates to inadequate supervision of outsourcing arrangements. This includes inadequate documentation and inadequate compliance controls. To assist the Committee, attached is a copy of an ASIC media release which was issued earlier this year on funds' compliance with disclosure requirements.

It should be noted that outsourcing is not an issue confined to superannuation trustees and is indeed relevant to other areas such as managed investments.

As you will see from the attached media release and statement, other areas of concern in relation to poor practices include the omission from member statements of specific information such as a break down of preserved, restricted non-preserved and unrestricted non-preserved amounts of a member's benefit.

4. Resources (pages SFS 790-791 of Hansard transcript)

The agency is not in a position to respond to this question at this stage. It is anticipated that a supplementary response will be forwarded to the Committee at a later date.

5. Details of commission issues in Westpac Enforceable Undertaking (page SFS 795 of Hansard transcript)

One of the components of the Enforceable Undertaking was the requirement that Westpac produce a new form of Advisory Services Guide, which itself was consumer-tested before release. The detail of the disclosure of commission payments by advisers was dependent upon the particular remuneration structure applicable to the adviser and also the type of product being sold. Thus, in some instances it was either:

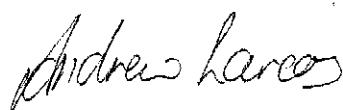
- A percentage amount representing the % value of the product or service sold; or
- A fixed dollar amount; or
- Some other remuneration or reward, such as a prize or holiday.

6. Financial Sector Levy (page SFS 800 of Hansard transcript)

Treasury is currently consulting with ASIC in relation to this issue with the objective of ensuring changes to the reporting process. Unfortunately, ASIC is not able to provide additional information at this time as it would be inappropriate to pre-empt the outcome of this consultation process.

I trust this information is of assistance to the Committee. If you require additional information, I may be contacted by phone on (02) 9911 2679 or by e-mail at andrew.larcos@asic.gov.au

Yours sincerely



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SUPER FUNDS PUT ON NOTICE OVER DISCLOSURE

The Australian superannuation industry was today put on notice that its disclosure regulator, the Australian Securities and Investments Commission (ASIC), requires immediate action to remedy deficiencies discovered during its recent national compliance campaign.

ASIC's national campaign, conducted by its newly formed National Compliance Unit, included examination of documents issued to individual members by superannuation funds managing assets of \$20 billion on behalf of 1.5 million Australians.

The campaign focussed on the extent to which funds are complying with the content and disclosure requirements of the law in respect of their annual reports (issued to all fund members) and their individual members statements (which provide members with personalised information on the status of their superannuation savings).

The review found that while 97 per cent of annual reports complied with all the mandatory disclosure obligations, 20 per cent of individual member statements failed to include one or more of the specific disclosure items required under the Superannuation Industry (Supervision) Act 1993 (SIS).

ASIC Deputy Chairman David Knott said that, while the regulator recognised that the majority of participants in the superannuation industry were doing the right thing on disclosure, ASIC was disappointed to discover that more than one in five of the individual member statements examined failed to include all the information required under the law.

"The high level of non-compliance in this area is the major negative outcome of this campaign and is not acceptable to ASIC," Mr Knott said.

"We are writing to all relevant funds requiring them to address disclosure deficiencies and to make it clear that funds with a continuing pattern of non-compliance with their basic disclosure obligations under the SIS Act can expect to attract enforcement action in future."

ASIC's consumer testing, conducted as part of the campaign, revealed that fund members place a greater importance and reliance on their individual member statements than on annual reports issued by their funds.

"It is the individual statements that members tend to see as providing critical information and which most retain for future reference," Mr. Knott said.

"That feedback from members reinforces the need for these statements to be complete and we are delivering a message to the industry that we will take a serious view of non-compliance in the future."

A second key finding from ASIC's campaign was that 81% of the reviewed funds have outsourced fund administration, including preparation of member documents, to external service providers.

MEDIA RELEASE

“We have some concern that fund trustees are placing too much reliance on service providers in meeting their legal obligations,” Mr. Knott said.

“It is essential that the trustees put in place adequate procedures to review documents prepared by their service providers. Our campaign indicates that a significant percentage either do not review compliance arrangements regularly or have no review process at all. Trustees need to remember that outsourcing does not diminish their continuing liability for non-compliance with the law” he said.

ASIC has compiled a comprehensive report concerning this compliance campaign for discussion with industry participants, associations and other regulators. A copy of both the Executive Summary and the full report, *'Making Sense of Dollars in Superannuation'*, is available on ASIC's website www.asic.gov.au.

For Further information contact:

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ASIC Superannuation Campaign Results

- The campaign was conducted in every State and Territory in Australia from 27 October to 1 December 1999. 67 Trustees managing 91 funds were inspected.
- The funds inspected held almost \$20 billion in assets for approximately 1.5 million members.
- 20% of trustees were unclear as to the role of ASIC in superannuation.
- 81% of fund administration is outsourced to external providers.
- 17% of trustees did not review the performance of the administrator at all; 11% only reviewed administrators once a year. The majority of trustees (72%) reviewed administrators compliance performance through regular meetings between the board and administrator.
- 15% of trustees had their own compliance manuals; the majority relied on compliance manuals developed by external administrators.
- 73% of trustees had a systemic timetable in place for the development of disclosure documents; the remaining 27% use 'ad hoc' or unwritten procedures.
- 85% of trustees had some knowledge of the superannuation law, however the depth varied widely.
- 54% of trustees have a toll-free number for member access for inquiries and complaints.
- 63% of trustees have not undertaken any form of complaints handling training.
- 20% of individual member statements failed to include one or more of the criteria required to be included. The most significant omission in the member statements was a breakdown of the amount of the member's withdrawal benefit at the end of the reporting period that must be preserved or unpreserved.
- 42% of member statements and annual reports included additional information not required by the law.
- 97% of annual reports included all information mandatory by law.
- Consumers relied more on member statements than annual reports to provide them with information. Member statements were generally retained and read, while annual reports were only read occasionally for educative purposes, and generally discarded.