Senate Select Committee on Superannuation and Financial Services

Main Inquiry
Reference (a)

Submission No. 96

Submittor: Mr John Crosby
203 Kent Street
NEW FARM Q 4005

SUBMISSION BY JOHN CROSBY,
203 Kent Street, New Farm Q 4005.

TO THE SENATE SELECT COMMITTEE ON SUPERANNUATION AND FINANCIAL SERVICES.

SUMMARY.

- . THE PRUDENTIAL SUPERVISION AND CONSUMER PROTECTION FOR SUPERANNUATION IN PARTICULAR HAS FAILED.
- . COMMERCIAL NOMINEES AUSTRALIA LIMITED AN APRA APPROVED TRUSTEE HAS BREACHED VIRTUALLY THE ENTIRE REGULATORY SYSTEM WITH IMMUNITY UNTIL BELATEDLY REMOVED AS A TRUSTEE BY APRA.
- . AUDITORS AND OTHER PROFESSIONALS HAVE FAILED TO DISCHARGE THEIR DUTY IN UPHOLDING THE PRUDENTIAL SUPERVISION.
- . APRA AND ASIC THE REGULATORS CHARGED WITH THE PRUDENTIAL AND STATUTORY DUTY TO SUPERVISE AND CORRECT NON COMPLYING CONDUCT HAVE FAILED
- . INVESTIGATORS AND AUDITORS APPOINTED BY APRA HAVE FAILED TO PROPERLY DISCHARGE THEIR DUTIES.
- . DIRECTORS OF THE FAILED TRUSTEE HAVE ACTED CONTRARY TO THE PRUDENTIAL REQUIREMENTS AND HAVE SO FAR ESCAPED ACCOUNTABILITY
- . EMPLOYER SUPERANNUATION FUND TRUSTEES HAVE FAILED IN DISCHARGE OF 'DUE DILIGENCE' EXERCISES BEFORE HANDING OVER MONIES TO A FAILED APRA APPROVED TRUSTEE.
- . LICENSED FINANCIAL ADVISERS HAVE FAILED TO DETECT AND INQUIRE AS TO THE SUITABILITY AND EFFICIENCY OF APRA APPROVED TRUSTEES WITH WHOM THEY HAVE DONE BUSINESS ON A REGULAR BASIS.
- . THE COMMITTEE HAS BEEN DELIBERATELY MISLED IN ITS WORK.
- . GREAT HARM HAS BEEN CAUSED TO UNSUSPECTING AND TRUSTING CONSUMERS WHO HAVE NOT ONLY NOT BEEN PROTECTED BUT HAVE BEEN RUTHLESSLY EXPLOITED BY CNAL AN APRA APPROVED TRUSTEE.
- . THE GOVERNMENT NEEDS TO ACT QUICKLY TO THE FULL EXTENT OF ITS POWERS TO REMEDY THE POSITION AND PROVIDE FINANCIAL ASSISTANCE UNDER THE SIS ACT AS IT SO PROVIDES
- . VICTIMS SHOULD NOT BE LEFT TO THEIR OWN DEPLETED RESOURCES TO FIND JUSTICE AND RELIEF.

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1. Term of Reference.

This submission is made in relation to the term of reference:
"a. prudential supervision and consumer protection for superannuation, banking and financial services."
It is principally a submission in relation to superannuation, though there are some references to banking and financial services.

2. Chosing an APRA Approved Trustee.

During 1999, I commenced making inquiries about a suitable structure for a personal superannuation fund. I had been employed by a major international company for 20 years and nearing retiring age, I started to make inquiries about an appropriate structure, knowing that I would need to soon have a fund which could receive rollover superannuation payments in due course from the company fund . The company fund would no longer be available once I retired. I had previously made some provision for my wife by establishing a small fund which was not performing well. I had attended some retirement seminars. I eventually met a specialist retirement adviser from a Sydney firm visiting its Brisbane office and set up a fund which allowed the flexibility I desired in relation to membership, allowing up to four family members, structured through a Trust Deed and with an APRA Approved Trustee as the trustee of the fund. At the time I was assured that an APRA Approved Trustee was the most secure and most reliable government supervised trustee service available. The fund was to operate through licensed financial advisers advising portfolio structure, the trustee administering the fund and the basis of payments out of the fund would be by way of "allocated pensions". This was an ideal structure to cater for myself and my wife when we reached retirement which was then scheduled for 2002, when I reached the "normal" retirement age of 60. There was added flexibility in this structure in that it would also allow other family members as members of the fund.
A feature of this arrangement was emphasised that the Trustee would be governed by APRA and at the time, I was informed that there were only about 12 APRA Approved Trustees. There was prudential supervision of the Trustee and that statutory and audit provisions applied. It seemed the ideal structure. Estimates were given as to the level of allocated pensions that could be expected from the fund, which were again suitable for our needs, and capable of accommodating my son, particularly if he was to be certified as incapacitated. As we grew older the fund would continue to be subject to the supervision of the statutory scheme. Choice of investments would be discretionary but guided by the licensed financial advisers. At the time the financial advisers nominated Commercial Nominees of Australia Limited as the fully credentialed APRA Approved Trustee and gave some details of its history and management, which were supported by the then advisers Saxby Bridge. The Trust Deed had been drawn up by a reputable law firm (Corrs) and a Key Features Statement was delivered with the documentation. The first cheque was paid in and the fund began to operate. There were some irregularities as to placing of the monies which were held in "Cash" for an inordinately long time, but on prompting were converted to a "balanced" portfolio. Charges were high because the fund

was under-capitalised, which would become more efficient when additional funds were contributed.

3. Developments in 2000.- Unexpected Redundancy .

Early in 2000, I was informed that due to a change in the ownership of the company, I would more than likely be made redundant later in the year. By this time the original financial adviser had changed companies and he continued to advise me in relation to the now changed plans. I had received preliminary details of the redundancy, though there was still dialogue that I might not be made redundant but offered other positions with the company. This actually occurred almost to the very day that I was eventually made redundant on 21.7.2000. The licensed financial adviser at his new place of employment (Qplan) continued to advise on the process, drafted submissions, we attended meetings with his supervisors (and he informed me that he also maintained contact with his former colleague at Saxby Bridge who had set up our fund). I also consulted ANZ Bank and discussed the APRA Approved Trustee scheme which I already had in place and options such as the holding of monies in cash management pending the choice of an ultimate investment portfolio. The final consensus of opinion after discussions with ANZ and Qplan was that I should merely stay with the fund that had already been established with CNAL as the APRA Approved Trustee and that all the monies relating to my redundancy, be paid to CNAL to be held in Cash Management until the final portfolio had been chosen, the allocated pension details worked out and to start the allocated pension probably around 21.1.2001. (I had obtained temporary employment for six months). The monies were paid to CNAL (though there are some irregularities in relation to the payment of the cheques and the banking of the cheques) through some failures on the part of the former employing companies. The cheques were not all paid into the bank account of the payee of the cheques which were expressly stated to be "Commercial Nominees of Australia Limited as Trustee of the Crosby Family Superannuation Fund". By a "short circuiting processes" the company seems to have paid the monies directly into a bank account styled something like "Commercial Nominees of Australia Limited as Trustee of the Enhanced Cash Management Trust". At the time CNAL knew that the ECMT was impaired. (It is now a matter of record of the Senate – vide Economics Committee Hansard 21.2.2001 and 22.2.2001 and Senate Hansard 26.2.2001). The monies were dealt with as "Rollovers"/ETP Eligible Termination Payments and were required to be paid into eligible funds. CNAL provided a certificate on which the employer acted in this regard. Though I have inquired from the employer it seems that the employer did not make any inquiry as to the standing of CNAL but relied upon its status as an eligible fund. To all intents and purposes all of the participants in these arrangements were completely aware of the suitability of the structure of the fund and had complete confidence in a fully regulated and "superficially" compliant fund. The rollover monies were to be held in a very orthodox manner by being held in "cash" pending development of a portfolio probably disbursed through the " Dollar Cost averaging" technique over time.(This strategy and the amount of the expected payments had been made known in advance by the Financial Adviser, Qplan to the APRA Approved Trustee CNAL). It appears from
Qplan files now that there was also discussion as to whether the monies would be placed

in the Macquarie Cash management trust. After making three payments into the fund between 26.7.2000 and 4.10.2000 we were advised on 10.11.2000 that the "Cash management" account into which the funds had been paid had been "frozen" due to a revaluation of the assets of the "Cash management" account, which by this time it had been revealed was the impaired "ECMT"! None of the correspondence or written acknowledgments from CNAL had indicated other than that the monies were being held in Cash! None of the correspondence from CNAL, the acknowledgment letters of receipt, had indicated that the monies had been placed into the ECMT. Correspondence between Qplan and CNAL had indicated that CNAL was contemplating making the payments into the Macquarie Cash Management Trust. This was not pursued by CNAL but the payments apparently deliberately made into the known impaired ECMT! We were devastated upon being notified by QPlan then (and still are) by this unprecedented action by an APRA Approved Trustee in having our funds placed into such a vulnerable investment. We soon learned that both ASIC and APRA had been aware of the defects in the fund, but it was not until some time later that this fact was acknowledged in Senate Committee proceedings in February, 2001. This immediately generated concerns as to the efficiency and reliability of the prudential system and consumer protection professed by the APRA Approved Trustee regime.

4.Deficiencies and Failures of CNAL as an APRA approved trustee. Complicity by APRA and ASIC.

Although I do not have all the evidence as to the precise failures, it seems these include breaches of the guidelines as to investment, failure to keep proper records of the company, failure to notify material adverse changes, failure to notify defalcations, failure to inform auditors of relevant matters, failure to have audits completed, failure to observe custodial requirements of the SIS Act, breach of "arms length" rules in relation to loans to related persons, failure to maintain capital adequacy and possibly sufficient insurance, possibly trading while insolvent, investing in non authorised investments generally, misleading and deceptive conduct, providing false information and generally conducting affairs in a shameful and unbusinesslike manner. In so far as the ECMT is concerned, ignoring the provisions of the Trust Deed, treating the ECMT merely as a Cash Suspense Account, not allocating and valuing units in the trust diligently (or perhaps at all), engaging in activity in conflict of its interests as trustee of Superannuation Funds. A litany of offences, breaches and deceptions, it seems almost too numerous to identify. Many of these deficiencies seemingly have been detected by APRA and ASIC though not addressed. Some directors of CNAL were directors of companies connected with a company "Australian Mushroom Farms Pty. Ltd." (or something to that effect) and loans were made to those companies and to CNAL itself it seems as a co-borrower!
APRA and ASIC in addition to the failures by the Trustee have also failed to enforce the laws prudently and prudentially in the areas where they have had jurisdiction.
One suspects a high level of incompetency, or even unlawful conduct.
Special Investigators appointed and special audits undertaken under the supervision of APRA and seemingly with full knowledge and complicity of ASIC also resulted in "No Action" which has resulted in grave injustices, yet to be fully addressed to the investing public and in particular inflicted great pain on unsuspecting and trusting persons such as

myself in arranging for monies to be paid into what were ostensibly statutorily protected Trustees. Even after I made complaints on being informed of the "freeze" to funds on 10.11.2000, I did not receive co-operation, but in the case of ASIC I was actually informed that I could not make any statements to anyone about ASIC investigating CNAL! APRA through the officers I mentioned, I thought were quite responsive and helpful in trying to identify the wrongdoings within CNAL. They complained of inadequacies in the law and the need to observe time constraints.
The circumstances are so grave as to warrant special investigation not only of the Trustee but the Auditors of CNAL, the auditors appointed by APRA to investigate other related failures of other funds, the competency and good faith of APRA and ASIC officers. A Judicial inquiry may be the only way in which the real truth of the matter can be properly aired and discovered.
Various changes occurred in the governance of the company with directors being appointed and serving for short periods. In one case a director Auton became a director and resigned, and was reappointed. This reputedly coincided with loans being made other than at arms length and during periods when the director reputedly supported the making of the loans which eventually brought about the downfall of the company as a Trustee. I have read in the press of late where Auton as a director of a company "Beacon" a publicly listed company has also "purchased" related service company assets from CNAL, and was in the process of purchasing the "trusteeship" of the AWERF fund until it was stopped it seems by APRA! Other changes occurred in the shareholding of CNAL. At least one director absconded after allegedly fraudulently making a "loan" to himself, ran up hotel bills in New York on the company's account and then moved to Nicaragua, never returning to Australia. The ECMT though never really operated in accordance with its trust deed which requires the application for and allotment of units at a "price" on application and "redemption" at values, never operated in that mode, but more in the nature of a "bank account" with monies going in and out, without any process of allotment of units and valuation of units on redemptions! There was no prospectus for the ECMT I am told. ASIC has apparently tried to justify the absence of such a process. None of the Financial Advisers involved have ever heard of, seen or been appraised at any time of the performance of the ECMT or that it was anything but a "Cash Management" facility into which monies were paid, invested in Cash assets and paid out as required by the clients. There has never been any indication given to the Financial Advisers from my inquiries that the assets comprised of investments other than as cash. Certainly no indication of loans which became evidence for the first time when the "impaired assets" were "revalued" by the new directors in November, 2000.

The result is a total failure on the part of APRA to supervise and protect superannuation funds, in particular our Fund and ASIC being aware of the governance and other multiple changes in the governance and ownership did not properly react to the warning signs. ASIC has taken the soft line in finding excuses for the failure of CNAL to comply with other investment and securities requirements.

5. Post failure remedies under APRA- SIS legislation.

Despite the concerns as to adequacy of the legislation, there are in fact strong statutory provisions which can be utilized to protect superannuation under the SIS Act. In addition to the limited protection given to APRA against incurring legal liability, there is provision under the SIS Act for the Minister to recompense funds on the application of the Trustee to the extent of any losses incurred by Funds. APRA can be found legally liable in certain circumstances, when not acting in good faith (or actual "bad faith"). The evidence already existing is surely sufficient to motivate the Minister, properly advised and supported. It is requested that the Committee recommend accordingly.

It is important to distinguish losses resulting in these circumstances and losses incurred through the normal reduction in value of prudent and authorised investments. Losses in this case have been incurred through failures to observe prudential and statutory provisions, and in some cases it seems civil if not criminal fraud. (It appears that no police or any prosecution action has been taken against any of the defaulters for criminal offences though it seems there could be evidence to support such action in some cases.)

It will probably be easily found that the losses to funds in relation to CNAL will cover a whole spectrum and mix of causes, including negligence, breach of duty, breach of fiduciary duty, fraud, deceptive and misleading conduct and other causes.

Consumer protection can therefore be achieved through the avenue of Trustees (now appointed by APRA on removal of CNAL) applying for financial assistance to the funds to the extent of any losses.
This can be achieved, through a plan, which could include provision for funding payments of allocated pensions, imposing conditions whereby the new Trustees or APRA can proceed to recover monies from those liable to contribute to losses such as directors of CNAL liable to the company for negligence and other wrongdoing, auditors who have failed to discharge proper duty, valuers and other professionals on whose advice CNAL relied or acted in relation to negligent actions, and proceeds of insurances where the CNAL has acted negligently in its duty to beneficiaries. Consumers in the context of the superannuation funds are in fact beneficiaries of the trusts.
The role of CNAL as a Trustee has continuously been overlooked and subordinated to its avaricious actions.
The role of those directing and controlling CNAL should also be closely examined, as it appears that persons concerned in the direction and control of the company are not necessarily the directors recorded as such from time to time. There have been many changes in directors, changes in shareholding, sale of assets of CNAL, prompting suspicion as to who has been in control of the company. Some of the directors are obviously "dummies" and acted under instructions from outside of the board in the conduct of the affairs of the company. Those "de facto" directors should also be brought to account. One behind the scenes controller of the affairs of the company is reputedly a disqualified person and therefore not permitted to be a director. There is evidence available to support the contention that one person at least controlled "dummy" directors who were installed at the time of the "freeze" of the ECMT and who carried out a "back of the envelope" revaluation of assets of the ECMT. Those directors in turn attempted to

"snow" the beneficiaries with false, incomplete, unaudited statements in an endeavour to quickly wind up the fund, again with doubtful motives and to defraud and extend the unlawful conduct of the CNAL as trustee. I also have a suspicion that there was also a plan to sell the assets at depleted and low values to related persons who would purchase at "fire sale" values. This seems also to have occurred with other assets of CNAL already!

Therefore if the full force of the law was exercised, within the provisions of the SIS Act, the Corporations Law and the general law, considerable redress and financial support to compensate and assist the restoration of the funds could be achieved.

The powers and remedies already available under the existing system, though not previously utilised should be put into effect. There is often a tendency to plead "inadequate" powers, when the ones that are available are not fully utilised. There is no real justification for not using the powers that exist for fear of some failure when the intention of the legislation is clear. Courts are there to interpret, regulators must do their duty! Appropriate action must be initiated immediately to protect consumers and give credibility to the prudential management system. Court appointed Administrators and or liquidators probably should also be appointed to CNAL so that transactions under taken in a "relation back" period can be addressed quickly! (Perhaps "Anton Pillar" orders and "Mareva" Injunctions should also be sought.)

6. Resources used and needed in redressing CNAL.

Since the commencement of the crisis CNAL has utilised considerable legal resources of major law firms including Minter Ellison (recovery attempts), Blake Dawson Waldron, (defending statutory matters APRA and ASIC), Freehills (advising COO), in addition to the original legal advisors (Corrs in relation to the Deeds). Some accountability needs to be exerted over CNAL in orchestrating such a legal intense strategy. There is a possibility of a conspiracy to defraud the beneficiaries in the Superannuation Funds. Victims such as ourselves have had to incur considerable legal costs to endeavour to protect our position in the face of such a conspiratorial alliance as we have had to face in CNAL, its numerous directors, outside influencing parties, lawyers, managers and APRA and ASIC failing to co-operate through unjustifiable smoke screens of secrecy, obviously aimed at protecting themselves from just criticism!

I have had to engage lawyers in Sydney, with whom I have had no contact in the past, but because of the need to be close to the action in Sydney and to prepare for litigation in perhaps one of the most expensive legal systems in the world, and away from my own home. It is a draining and terrifying experience, even for someone as close as I have been to the law as a practising lawyer for over 30 years. It has put considerable strain on my home life and family, which I would not wish on anyone at this stage of a working

life, facing such a devastating impact on one's Superannuation in what might otherwise be expected to be a "virtual" risk free APRA Approved Trustee regime all this on the eve of retirement! This is the sort of thing which a good regulatory regime is intended to spare the retiree. Why have a system that protects the wrongdoers and aggravates the position of the innocent and vulnerable!

The almost callous, unconcerned and feeble yet astonishingly nonchalant attempt at sophistry by the overconfident and contemptuous people at CNAL is something I will find hard to forget. The conduct of the "dummy directors" appointed by the puppeteers controlling the horrendous conspiracy to continue the fraud and fictions perpetrated at CNAL will astonish the true professionals who may get to the bottom of the "mushroom" sham and ridiculous "write down". Until they were replaced the sort of comments made as late as 10th January, 2001 was something to the effect "Well, there has been virtually no Press and no litigation brought at all! We are not afraid of the people at APRA and ASIC, they are no good anyway, all the good ones are in the firms!"

The process and procedure to redress such audacity of the likes of CNAL and the officialdom of ASIC in particular is something which I commend to the committee to fully investigate, or have the proper reliable authorities do so. APRA spokesmen at least seem to have "come clean" in the explanations, though I suspect there is much more to discover! Some of the ASIC officers seemingly would prefer to "wipe their hands" of any responsibility pleading more the case of the defaulting company CNAL and its directors, that the blatant conduct is beyond the power of ASIC!

CNAL has endeavoured, with some success to portray the company as a "Phoenix" style company, through changes in directors and shareholders, being renovated at each change and emerging unscathed from the previous reprehensible conduct of the company. The company is still the same company, irrespective of the change in directors and shareholders and will always remain accountable under the statute and under the general law . This is a technique not unknown to ASIC who have already expressed their awareness of such a process, apparently widespread in the "darkside" corporate world of failed companies, including "Dot.Coms" of late. The process has been used with some success by CNAL with both APRA and ASIC from my observations.

Special attention is also required to audit the process and the corporate management system used to manage the two investigations of CNAL. In particular the process following the complaint by a director of CNAL to APRA in Feburary,2000 it seems resulted in the appointment of auditors under S.257 of the SIS Act. This investigation appears to have been extremely long winded and non conclusive. The processes, meeting of directors of CNAL, meetings with officials of APRA, conduct of the auditors, advice taken, and remedies sought need to be examined. A statement by the former General Manager of CNAL, Stephen Hanich has set out a process which was put in place to manage funds and segregate them from the "contaminated" ECMT. This process apparently operated for many months. The legal effect needs to be determined. This indicates a separate trust was created, even if a trust deed does not exist.

There is effectively no accessible "Dispute Resolution Process" where beneficiaries can have quick access to a process that is staffed by competent and authoritative intermediaries. The Tribunal seems to be a lifeless and non-accessible institution. The "in-house" dispute process, merely plays into the hands of the actual perpetrators of the wrong-doing. It is ludicrous that complaints about CNAL would be referred to its "sister" organization, to deal with the dispute and complaints, and allowed a ridiculous period of something like 90 days in which to reply.!
There needs to be a least an "Ombudsman" appointed, ahead of the clumsy process to refer to the Tribunal. The Tribunal access process needs a special provision whereby the Tribunal, or a judicial officer can grant leave to have the Tribunal convene ahead of the otherwise crippling time periods imposed in matters of importance. I asked for the Tribunal to be involved in the current matter, as this would be a much more civilised and potentially strong and independent avenue to address major problems.

A special "Whistleblowers" procedure needs to be advertised and identified to encourage the courageous members of staff of APRA Approved Trustees to consult with and inform on any suspect procedures as well. An "Ombudsmen" funded by the Industry could be added as it appears that APRA though the obvious agency at the moment, is not equipped to deal spontaneously with important matters. There are many precedents which can be borrowed from other regimes, such as Work Place Health and Safety, Environment and other regulatory areas to implement a fairly strong and cost effective procedure.

The process by which this treatment was changed, and its validity and the accountability of the directors of the company, and the company itself (it acts through directors in office at the time) needs close examination. The regulators APRA and ASIC were best placed to supervise this conduct. They have failed. It is therefore now necessary to have that conduct re-examined by skilled and competent investigators. This process should also include a thorough analysis of the supposed "sale" of assets for $8M to make the fund whole! This also appears a sham if shortly after the assets have been valued at zero! (Vide Economics Committee Hansard.)

7. Misleading your committee.

It seems to me that your committee has been grossly misled by the regulators ASIC and APRA. In reading your reports of sittings right up to October, 2000 there is no mention whatsoever of the blatant and clear breaches and difficulties which had already long been detected in relation to CNAL. This raises considerable suspicion as to the motives of the agencies. It surely must be thoroughly investigated and those in default, not only in CNAL brought to account. It is possible that APRA and ASIC officers (and their auditors) of course may have been threatened (or bribed) by CNAL operatives. This should also be investigated. I have been informed that even now the disqualified person controlling CNAL is threatening to sue APRA in relation to the removal of CNAL as Trustee of the APRA funds!

8. Banking and financial services.

In relation to banking, there is one glaring weakness revealed in my experience of the present problem. Not actually being a "customer" of the bank which has drawn the cheques, I have been unable to gain access to some information, relating to the account into which the actual cheques were paid. This of course enables the employer and the bank to fabricate explanations when called to account as to whose favour cheques were made payable, whether they were paid strictly in accordance with the manner in which the cheques were made, whether they were indorsed correctly, whether they were actually paid into different accounts. Both the employer and the banks have to gain from withholding such information from the superannuation consumer who is not a party to the cheque process either as drawer or payee of the cheque. It is really only a matter of fact and courtesy that this information could be made available, but without some form of prudential rules or compulsion this will be able to be continuously denied. Of course where there are no difficulties this would not be a problem, but has been in the current case. (I am presently being forced to deal formally with my request for information after discovering irregularities in relation to one of the cheques.)

Financial Advisers are also not left without some accountability. They are also licensed by ASIC. ASIC has prompted on the occasions that I have been able to establish some dialogue that the Financial Advisers, could have and perhaps also did have knowledge of the failures and weaknesses at CNAL. Both Saxby Bridge and Qplan the advisers I used have denied this. They say that normal research could not and did not reveal the sort of deficiencies that were obviously well known to ASIC and APRA and the auditors and investigators, all of whom are bound to secrecy! The inference is that despite this, the Financial Advisers should have known. (An extension of the Efficient Markets theory, that all "knowable information is reflected in the market?) This may be the case in some circumstances, where it seems there was something of a "mini run" on the ECMT by those in the "know". This may also justify some further investigation as to how this information became known, in breach of the "secrecy" veil that supposedly surrounded APRA and ASIC, but which ASIC implies should have been exposed. I am assured that none of the research organizations knew a thing about the CNAL difficulties until revealed in November.

> Unless failures of APRA Approved Trustees is to be expected, and that CNAL is just the first of many which will fail, the assumption must surely be to the contrary! However, an inquiry or "due diligence" process which could involve an open and searchable data base of every APRA Approved Trustee, surely must be made available to researches and others who can search, openly on the APRA site for example as to the current status of Trustees. However while every "APRA Approved Trustee" is portrayed to enjoy "equal status" with all others, a rating, ranking or distinguishing system or hierarchy of APRA Approved Trustees cannot really be allowed to exist. All must be beyond reproach! Any Cash Management Trusts, Trust Accounts, must also be fully transparent and fully in compliance with a strengthened ASIC supervised system, without exemptions or exceptions!

The inference in the expressed view of ASIC (10.1.200) is that effectively despite the veil of secrecy applying, that financial advisers should be able to pierce this veil and have a view as to the reliability of the Trustees, "advertised" as being approved, but yet in some way "defective"! ASIC should extend its "Watchdog" philosophy and "bark" more figuratively speaking by publishing the facts on a "Continuous Disclosure" basis of the factual position, with perhaps restricted access to its Licensed operatives. It seems otherwise they are to rely on "wink and nudge" methods to keep the licensed persons properly informed in relation to defects and defaults.

If this sort of Xray vision is something expected of the Financial Advisers, then I must agree that some responsibility for the failure falls on the Financial Advisers. The Trustees also maintain a right to continued acceptance without any real evaluation of the trustees undertaken by Financial Advisers. I do know that Financial Advisers have professed being able to advise clients when the clients themselves might not be in a position to assess markets and other situations, so this type of expertise needs to be entrenched and perhaps regulatory responsibility attributed to the licensed Financial Advisers to be able to identify weaknesses of the type now being revealed of CNAL.
This surely could and should be done by the regulator of the Financial Advisers – ASIC, if not by each Financial Adviser individually, then through their own organization FPA, which itself also seems to be completely ignorant of any research by the research organizations and certainly does not seem to have any interest in evaluating or being able to advise the public as to the status and reliability of APRA Approved Trustees.

9. Employers and employer schemes forcing out members.

I have inquired from my former employers which have contact with a number of organizations in the industry. All vowed they had no knowledge (though there was a hint, but later said it was a mistake) from one source that CNAL was in some sort of :"trouble" thought to have been in the papers even! (this was later stated to be incorrect but of course now proved to be true!.)

Some test needs to be applied to Trustees of existing employer funds who no longer desire to administer Superannuation on termination of employment, to make any information available as to the suitability of Trustees to whom payments are proposed to be made. Employer funds have considerable exposure to the processes and may have useful information which should be disclosed to unsuspecting employees nominating new funds.

It has been mentioned that employers should have some accountability and should undergo some process of inquiry before paying monies to Trustees whose standing might be "doubtful" even though they are badged as "APRA Approved Trustees".

10. Other Trustees

There must be some concern that other Trustees may be in breach of their responsibilities yet continue to trade as APRA Approved Trustees. This is a frightening thought, yet one which could statistically be so, even now. CNAL is being billed as the first Trustee to be delicensed by APRA. CNAL has claimed that it has conducted its Cash Management Account (through its non orthodox ECMT) in much the same way as other Trustees, having no regard for issuing of units, revaluation of units etc. Perhaps even lending to related parties from cash funds. Unless though it is endemic in the superannuation industry, it must be presumed that this CNAL mess is unique and treated accordingly, though the level of awareness and vigilance should be increased in relation to all Trustees who profess (and advertise right to the last in the case of CNAL) its "APPROVED SUPERANUATION TRUSTEE" status. It is in this assertion that we and many others have relied. It truly is the responsibility of the regulators and this is effectively APRA and ASIC that this must mean what is says and what it implies!

Industry organizations of Trustees also may need to take some responsibility to create an additional "Code of Conduct and Ethics" to ensure that members conduct their affairs and have a second line of protection, though of course non-statutory among the industry to help ensure integrity. Other Trustees will of course have some liability to contribute to levies and other imposts permitted under the SIS Act. This should act as an incentive to increase "peer" accountability in the industry, while still remaining independent and competitive.

The "Ombudsmen" process described earlier could also be expanded to cover breaches identified in such a Code.

11.Press

I have also considered just what is the role of the other "public protector" the Press, has played in the whole matter. I am now greatly suspicious of the motives of some sections of the "financial" press and their competency also, if all of the "knowable information" which was available in the "market" was not known at least to some members of the Financial Press, if not the normal press. It seems that if the information was known, there has been a great failure on the part of the press to expose the conduct of this failed and flawed organization, CNAL, APRA and ASIC, which the Press seems to have chosen to effectively ignore until after the "freeze" occurred. CNAL had been under investigation for months! Surely failure of a Financial organization, masquerading for so long as an APRA Approved Trustee, yet secretly involved in mismanagement at least and probably engaging in unlawful conduct in relation to absconding directors, loans to related parties, engagement in dubious investments, has shown some sectors of the press to be less than responsible in pursuing and identifying, and appropriate publicising the wrongdoing and damage done. (I believe there has also been an attempt to actually conceal the facts even when known by the Press.) Have the "responsible" Press also been shielding people who need to be exposed? A former executive of CNAL has given a statement which referred

to the "Code" of silence which prevailed also at CNAL for fear of a "run". Something of a "run" did then occur, but again secrecy prevailed when transparency and honesty was required. Some sections of the press seem to have chosen to look for "scapegoats" ignoring the real villains CNAL who have been so callous in their disregard for their customers and beneficiaries. CNAL seems to have been able to manage some sectors of the Press to distract attention from the shortcomings of its own activities and of the Regulators in particular yet remained "silent" without explanations to anyone for their conduct at all!
This aspect no doubt is way beyond the powers of the Committee, but surely cannot really escape notice. Where were the Press with their incisive resources, and their responsibility to the public when it was needed – like last April? The Press Code of never revealing sources must not have been advertised very well in this case, as it seems not one member of the financial Press hinted at this sort of looming failure.

There may be a need to give protection and in fact encouragement to "whistleblowers" to come forward to the authorities, and yes maybe even to the Press! The Financial Press probably should be encouraged to be more diligent in their activities and the regulators more open, rather than trying to use press contacts to protect their own shortcomings!

12. Auditors

The role, function, and contribution to the problem (and unfortunately absence in contributing to the solution so far) of auditors seems to me to be profound. I have not even seen an audit report! Though charging an audit fee, CNAL have never provided me with an audit report. I understand that there is not yet one available for the audit to 30.6.2000. (In any case I did not have any monies contributed until 26.7.200). Goodness knows when I will ever see or hear anything from the auditors in respect of the processes, procedures, management letter of advice, qualifications, footnotes and other normal reports from the auditors of a fund of which I am a beneficiary. The manner in which CNAL have escaped the responsibility to obtain an audit report and the manner in which audits have either not been performed or completed is in any normal business expectation beyond comprehension. What have the auditors done? What have they found out? What is their report? Who are the auditors? None of this information has been volunteered by CNAL. None of it has been made available in response to my requests. The standards allowed to exist in relation to this audit and the relationship between the audit commissioned pursuant to S.257 of the SIS Act and the performance of the respective auditors seem to be beyond comprehension! The Committee surely must press on the point of audit matters and conclude a complete failing as a mechanism for protection! The accountability of the auditors needs to be focused upon with great attention to detail . **A competent auditor needs to "audit" the processes of the auditors!**

13. Dealings with Financial Advisers and CNAL as to placing of Funds.

I have not actually received any explanation from CNAL as to why my funds were placed in the ECMT. I am not aware on what criteria CNAL as trustee decided it was the best place for my funds. (I have been informed by Qplan that on occasions recommendations made by Qplan as to investments on behalf of clients have in fact been declined by CNAL as Trustee – possibly rightly so, by CNAL exercising its discretion as Trustee.) CNAL operatives with whom I dealt included Campbell Simpson who signed the letters acknowledging the receipt of the funds, and included the noting that the funds would be held in "Cash" pending completion of the portfolio. Despite my attempts to do so, I have been unable to get any further explanation from Campbell Simpson. (I understand he may have left the company a few days ago.)
Qplan which had replaced Saxby Bridge as my official "Financial Adviser" had assured me that the funds were held in trust. I had even inquired as to the possibility of withdrawing funds and paying tax when I signed a contract to purchase a house in Brisbane. CNAL in its letters had set out the usual statement that it would take time to place the funds. Up to that time, CNAL held instructions to invest the whole fund in a "balanced" portfolio. This is what it did in relation to the monies which had been deposited on behalf of my wife into the fund. It took CNAL a considerable time to do, and they had to be prompted after leaving the monies in "Cash at Bank" for an inordinate amount of time. (Probably as it now turns out because the monies had been "invested" in 1999 into the "Mushroom" and other nonauthorised projects!)
QPlan has correspondence which indicates that CNAL had indicated it might place the funds in the Macquarie Cash Management Fund, just prior to when the funds were received. I had been in discussion with Qplan for quite a time, advising the nature and amount of the funds which were due to be paid into our Fund. I now suspect that CNAL in anticipation of being able to channel the funds into the impaired ECMT did everything within their power to do so, rather than to act in the interests of our Fund. There was a dispute as to the amount of "commission" which was payable in relation to the deposit of the sums. There was considerable dialogue between Qplan and CNAL. I had complained that taking 1% of the funds, merely to hold in cash management was not acceptable. After some discussion, which the Qplan manager said CNAL rather surprisingly quickly conceded.(The monies were then obviously paid into the impaired ECMT!) (Perhaps some sort of spiteful punishment for questioning the process!) In fact it now appears that they were paid directly into the ECMT on receipt of the funds from Shell! (This aspect is still being checked, I have asked Shell/AMP to provide details of the cheques and payments as referred to elsewhere and at the time of writing this, I do not yet have all the information.)
When Saxby Bridge offered also to give me a further submission in relation to the funds in October,2000, the new local representative informed me to the effect to put at least "half" of the funds into Macquarie. I inquired from CNAL at the time. There was an exchange of e.mails with Frank Briggs of CNAL who had taken over the administration role. In response to my inquiry he informed me that the funds were being held in trust. He also outlined the state of the ECMT in the note as being buoyant (no mention of impairments), though not stating that is where the funds were actually held. I had not

received any statement from CNAL as to where my funds were actually located, though I had asked. I also mentioned in the dialogue with Frank Briggs that I would rely upon the Trustee as the Trustee of the fund to direct the funds accordingly. (This was in October shortly before the freeze in the ECMT and at time when CNAL was fully aware of the deficiencies in the fund.) I have been unable to obtain any explanation since from Frank Briggs. I have tried on occasions, including writing to CNAL asking for statements from both Campbell Simpson and Frank Briggs. This request, like all of my letters have not been replied to by CNAL. There is no evidence of competent advice being taken by the Trustee as to the proper course of action to be taken, but merely desperate (and vindictive action).

There are obviously serious weaknesses in the administration of CNAL. There may not even be any precisely prescribed or properly developed management procedures for dealing with known impaired funds. Price Waterhouse Coopers had been appointed and must have had dialogue with CNAL on the matter of the deficiencies in the ECMT. There is therefore it seems to be over-reliance, if there was any reliance at all, on the "hope" of rehabilitation of the ECMT from the sale of the assets of $8Million (as revealed in the Senate committee hearings.) There may be a need to examine what representations were made in this regard sufficient to "fool" CNAL (and possibly the auditors if they were involved in this aspect) and in particular the directors and controllers of CNAL. (Perhaps they were also a party to the failed attempt to sell the assets of the Mushroom farm into some new public float scheme, which I have now recently heard about.) Garry Ling the person appointed by CNAL in December seemingly to try to put the affairs into order has commented that CNAL had absolutely no idea on how to run a "Cash Management" Fund. He had been trying to teach them (belatedly) how to do so! It is quite apparent that there was absolutely no order in the process at all. I have now been informed that without any particular reasons, some bank accounts were opened in the names of funds, others were not, some authorised to be paid into one account were paid into another and vice versa. It seems that the actual processing of the receipt of monies was without any order at all for quite some time! My monies were intended to be held at the "lowest risk" profile of any investment – the surrogate "risk free rate", invested in "Cash" pending defining of a portfolio. There is absolutely no justification for the loss of monies intended to be invested at the "surrogate risk free rate"! The incompetence of the Trustee could not be greater than that exhibited by CNAL! Other than examples of other Trustees such as Solicitors and others wrongly interfering with Trust Account funds, it is almost impossible to contemplate how a Trustee could mismanage the simplest task of merely holding monies in "Cash" when the whole strategy was made known to the Trustee prior to making the payments! The "confusion" as to whether the monies are monies in Trust or purchase of units in a trust needs to be resolved! It appears that most of the monies recently received into the account have not been dissipated by foolish investments into "Mushroom" Funds. There is a need to establish quickly the real legal (and equitable) status of the monies still intact! The monies that were "lost" after being onloaned to the mushroom and other investments must be clearly identifiable and distinguishable from monies later "segregated". There may also need to be some work done on determining whether there was in fact a further

dissipation of the funds between June and December, where it appears that the "Cash at Bank" has been depleted from $3.3.M to $2.6M.

In any event this whole process is clearly outside of the parameters of a "Cash Management" Fund. Strong criticism and a process for correcting the many breaches and aggravation of the initial wrong decision to allow investments into such a process needs to be addressed.
I understand that there is disquiet in the Trustee industry because of the attention the CNAL failure has brought mainly because some of the practices now discovered in relation to CNAL are also widespread throughout the industry. There may be attempts on the part of the industry to try to "excuse" such behaviour because it is not confined to CNAL! The Committee may need to give this aspect special attention!

14. Vendors and associates in real estate and business transactions.

The unaudited statements reveal astonishing variations in values in relation to the Mushroom and Retirement Village Transactions. The directors who were the authors of that shameful report in December 2000 left many questions begging. Who were the vendors, how was the value established, how were the loans made? How did CNAL become both a borrower and a lender of the same monies? What supervision occurred and what prudential and monitoring processes took place in relation to the mushroom farm activity, "(mis)managed" by the very persons who were supposedly conducting a Trustee business, from the same premises!

There are extremely suspicious dealings, with "vendor" security and other well known "sham" processes in evidence in the astonishing revelations of the document which culminated in a "revaluation" of the assets as at 30.6.2000 a month before our first lot of monies were contributed! This piece of completely incompetent work must come under scrutiny of the Committee and the authorities! It reveals an extraordinary level of a "Confidence Trick" and prelude to what is apparent to me as an even bigger "scam" planned to be perpetrated on the Superannuation Funds of which it was Trustee. **In our case where they "grabbed" monies without any regard for their duty as Trustee of our Fund, but intent only on replenishing the first "hungry" and demanding account in dire need of funds! No consideration whatsoever as to the prudential treatment of those monies, even less than the directors in power at the time of the shameful loans and investments which brought about the failures!**

The Committee should ensure that all vendors and associates affairs, those of directors in office, in related companies and close enough to benefit from the apparent "shams" are properly investigated. Otherwise they will all get away "Scot free"!

15. Insurance

I have not yet been able to establish precisely what is the nature and extent of insurances effected by CNAL to cover its legal liability. My information is to the effect that HIH was the insurer during the year 1999. I understand that another insurer, Liberty may have been the insurer at the time. I am not aware of the status of the policies. (My latest information is that HIH actually declined to renew the insurance when it became aware of the S257 Notice issued. New insurers were obtained, I understand after being informed of the issue of the notice, and on payment of a greatly increased premium.)
On the advice I have obtained the legal liability of CNAL will be established in relation to its breach of duty as our trustee, breach of trust, breach of the trade practices act, in relation to deceptive and misleading conduct and other causes. Others will also be liable in the way of directors, officers, advisers, auditors, and other professionals, who in turn may have insurances. There has been some conjecture as to whether the existence of fraud will invalidate some aspect of the insurances, as it appears that part of the loss in the ECMT is due to fraud or conduct closely akin to fraud on the part of an absconded director.
There is another dimension of concern in relation to insurance. If the insurer is HIH the adverse publicity is extremely concerning. APRA is of course also the regulator of the insurance industry.
The Committee is therefore requested to examine any aspect of the CNAL matter which may have any connection with HIH and the difficulties it is also experiencing.
Whatever the outcome, there is a case for the Committee and the regulators to take appropriate action to ensure that the insurers do not play games in relation to the liability of CNAL but honour their very clear obligation to indemnify CNAL in respect of legal liability of CNAL as Trustee to our Fund (and others).

16. Solvency of CNAL etc.

There is concern as to the solvency of CNAL. While this is a matter which may be under investigation by ASIC and perhaps the new Trustees appointed to the various Trusts, there may also be need for the Committee to draw the attention of ASIC and APRA both of whom have special status in relation to the taking of winding up procedures, to do so, and to protect assets which CNAL and its incompetent owners and directors may be tempted to try to shield from proper accountability. The degree to which directors, past and present should also be brought to account should also be fully investigated and pursued to the extent possible through the processes of the Committee, APRA, ASIC and the other law enforcement agencies of the Commonwealth and the State of NSW. (AS of Friday 9.3.2001 I understand that CNAL has effectively shut down its operations, paid off staff (after they were not paid on time) and now running under control of "consultants". Yet another director has recently resigned/been replaced to try to escape some accountability no doubt!
There appears to be a history of rather dramatic changes in the board of directors of CNAL and also a less dramatic but profound trend in the change of shareholders.

Directors of companies are ultimately appointed and removed by the shareholders. Therefore while the company is intended to be governed by the board of directors, its shareholders do ultimately have effective control. Some explanation needs to be sought as to the reasons for changes in directors of the company. At times there have been wholesale changes in the board of directors! This can occur through "mass resignation" or "mass removals". These governance issues are matters for investigation by both APRA and ASIC as both are required to be notified of such changes (and apparently were, or if not this is yet another aspect of non-compliance.) It is then necessary to examine the reasons for removal, appointment, tenure of office, arrangements and regularity of meetings and governance issues of the board. I understand that there are effectively no corporate records of proceedings of the board of directors. This implies that the company was therefore being effectively controlled by other processes. This could be either by the management, or by the shareholders, exercising effective control outside of the board. With so many changes, and in some cases directors coming on to and off the board periodically (twice in the case of director Auton), there is suspicion as to whether persons other than the nominated directors were effectively acting as "de facto" directors. The trend in relation to shareholding and later transactions imply that the persons controlling the major shareholder Power Capital, and Auton who has been a director at various times, (and I am informed a major supporter of the loans and other transactions involving the mushroom projects) and a director of Beacon which has purchased assets recently in companies closely related to CNAL must be brought to account by APRA and ASIC. All transactions involving the shareholder, Auton, Beacon, and CNAL and particularly the receipt of any monies, commissions, chain transactions, must be fully and carefully examined by ASIC in particular. ASIC has strong statutory powers. I understand it has only superficially exercised them under S.19 of its Act to examine Garry Ling the COO, who succeeded the person Stephen Hanich, (who has given the profound statement as to Segregation of the monies in the ECMT) in December, after all of the highly questionable activity had taken place. ASIC has powers to extend those examinations and should, if there is a desire to identify all persons who have benefited through the failures of CNAL. (There appear to be many when one reads the infamous "Revaluation" letter explaining the freeze of the ECMT!). ASIC or perhaps a more independent investigator, as ASIC seems to be greatly tainted by the whole affair, should be commissioned to make appropriate inquiries and bring all of the those benefiting into account and to contribute to the losses caused. There is evidence of "milking" of the monies from what was ostensibly a "Cash Management Account/Trust" through devious and non-transparent fabricated transactions. Other persons, including Mr.Phil Dally of Saxby Bridge appear now to have evidence of the many transactions. CNAL bankers and other professional advisers should also be examined, as there appear to be irregularities. This should include solicitors and other advisers engaged in preparation of the various "sham" documents relating to the "Mushroom" transactions. **Only the government agencies have the statutory powers to do so and to bring the real offenders to justice and accountability.**

It is in this area where the Committee must pursue its interest to expose the weakness in the processes allowed to operate through inefficient prudential supervision of CNAL

APRA and ASIC enjoy special status under the Corporations Law to wind up companies. Surely this action should be taken without delay given the telling signs of failure of this company engaged in unloading assets to dubious business associates (and associated with former directors and supporter of the Mushroom lending fiasco!)

17. Business intrigue and motivations.

There is a further dimension of business intrigue which seems to me to have some bearing on the events which led to the replacement of the then CNAL board members in early November (who in turn were shortly after replaced). It seems that the disqualified person controlling CNAL threatened to bring about the ruin of one of the Financial Advisers and their clients, in retaliation for some breakdown in a business deal. **This aspect may bear some further investigation.**

18. Cost and financial impact.

CNAL has already caused great human and personal cost to the victims of its failure to act as a responsible Trustee. This cannot be ignored. It is the first line of cost in circumstance of this nature.

The Financial Cost and damage caused is immense. I have not even tried to calculate it, but some attempt should be made to do so. I expect already that the cost of the regulators in pursuing the complaints would be immense. It is a shame that ASIC for instance decided not to act until there were public complaints, even though it knew of the circumstances! (This is one aspect of reasoning I am having great difficulty in understanding since reading the Senate Hansard.)

The total cost will be able to managed downwards by the Minister taking the action to provide financial assistance and to benefit from recoveries made over time. The alternative of putting the regulators, the victims and even the perpetrators to the additional costs of deliberate pursuit of each cause of action through courts or even through negotiations, will not be able to be justified on a "cost/benefit" analysis! There is really no economic benefit to any sector in forcing the matter down such a path. Cost minimisation should be a major consideration in seeking a solution.

The cost to me already is unaffordable. The time taken to pursue every aspect as it affects me by legal action will already see me and many others old and senile, even if everyone survives long enough (through the pressure) to see it all through the processes. No doubt this is one of the callous motivations that the perpetrators probably planned when taking

such opportunistic action to "scump" Superannuation Funds of which they were the Trustee!

I understand that the ECMT was used as the "Clearing account" for all monies, rather than as the home for units purchased. Dividends and the like were paid into the account!

I understand that some persons actually receiving pensions through their funds have not now received any payments for about five months! This is completely heartless and completely against the letter and the spirit of the law which allows the Minister to act to put funds affected by the non-complying companies into funds.

19. Staffing, Resourcing and workload of ASIC & APRA.

Throughout my involvement in pursuing the problems since November last year, it has became quite apparent that one of the contributing causes of failure could very well be the inadequate resources of the Regulators. We are all too familiar with the cry for more staff and resources, whether in the public or private sector. There does however appear to be some genuine cause to consider whether APRA in particular because of the workload in administering a relatively new system was prejudiced in the discharge of its functions by having insufficient staff and resources. This is of course no excuse and from a protection and reliability viewpoint, it is not open for regulators to abrogate the duty to perform. However, it does emphasise the reason, though inexcusable in the end, as to why APRA has failed so blatantly. The Committee might consider this aspect in its deliberations out of fairness to APRA. A similar situation could well apply to ASIC.

Perhaps as part of the regulatory process the Approved Trustees should also be checked as to their adequacy competence, resources and financial viability.

20.Litigiation which may otherwise be required to be Pursued

Unless the Minister acts promptly and supports the funds in accordance with the provisions of the SIS Act, the type of private litigation which might need to be pursued includes the following:

1. An action against CNAL, its directors, officers, and advisers for breach of duty, breach of trust, breach of fiduciary duty, deceptive and misleading conduct and other causes. Probably joined with this action, as additional defendants, Insurers of CNAL, insurers of the directors and officers, auditors, their insurers, and probably ARPA and ASIC and particular members and officers of each of those organizations in their private capacities.
2. As additional actions or part of the first action, action against the Financial Advisers, Saxby Bridge and Qplan, and the respective operatives who advised on the matter.

(In the 1990s there was a similar case Re Abrook finally decided in the Federal Court in South Australia, with multiple parties and mutiple litigation. It is reported and can be found under "Derivative Actions" search in Scaleplus on the Federal Attorney Generals site.)

3. Depending on progress with negotiations, an action to pursue the matter of "Constructive Trust and Tracing" of the monies deposited. Already I have had to put the Trustees of ECMT on notice. CNAL had previously given an undertaking not to disburse monies in this account when we threatened legal action in December. This undertaking has been extended by the New Trustee with some modifications as to being able to change the bank account. This principle allows beneficiaries to "trace" monies that have been incorrectly dealt with by Trustees. In the present case CNAL were trustees of three successive trusts, Our Superannuation Fund, the ECMT, and the Confidens Trust, where there were payments made. There apparently was also a run on the fund by other Superannuation Funds (in the "know") of which CNAL: was also the Trustee. Therefore in every case, CNAL was "on notice" as to the defects and its own breach of trust.

4. Possible "Derivative Actions" to chase the monies. The real plaintiff should be the existing trustee. I have requested the trustee to take the action. If a Trustee fails or delays then the beneficiaries can take the action under what is termed a "Derivative Action" In such circumstances, the new Trustee could also be a defendant.

5. Other proceedings such as the possible winding up of CNAL may also need to be taken as a creditor or upon the issue of a "statutory notice" to CNAL if such action is not taken by APRA and ASIC

As you will soon realise this is a formidable task and will require tremendous resources and financing. I am certain that the SIS Act was intended as a measure to prevent the need for this sort of unnecessary action. By careful organization, though apparently there is as yet no real precedent, the Minister can impose conditions and recompense the funds.
Otherwise, it will take years (and funds beyond anyone's means) to fully litigate. (Abrook seemed to take like 5-6 years).

The Committee could take a practical assessment and give a strong recommendation to the Minister to act accordingly, recompense the funds, impose appropriate conditions and give at least some credence to the spirit and letter of the existing prudential system.

21. Tribute to the Committee.

May I pay tribute to the Committee and in particular to the Chairman for his responsible and spontaneous and fearless but informed pursuit of the now ever so obvious failings of

CNAL, APRA and ASIC. I would like to give my thanks and encouragement to continue the unfinished work in bringing about a reliable and protective system for the prudential regulation of the superannuation industry and protection of consumers. I am only too willing to assist the committee and would be prepared to appear before the committee if it is thought that I can assist the committee further in its work. (I now have the invitation to do so.)

I have confidence that the committee will be able to overcome any pressure not to take the fearless and necessary action. I can only express the view that it is only really a committee comprised of interested and competent people with the protection and probing capabilities with which it is vested that can discover and recommend solutions. I realise that the members will be exposed to many other considerations. I ask that the committee remain focused sufficiently to help correct some very grave injustices through failure of the system as now revealed in relation to CNAL.

Background and Qualifications

I am a victim of CNAL, APRA , ASIC and others in the Superannuation Industry. I am 58 years of age. I presently reside in Brisbane where I was sent on secondment for a period of three years originally by my employer from Melbourne. I am a Barrister and Solicitor of the Supreme Court of Victoria, Solicitor and Attorney of the Supreme Court of NSW and Solicitor of the Supreme Court of Queensland. I hold a Graduate Diploma in Corporate Finance (Swinburne 1987). I have been General Counsel of three major World Class companies (Shell Australia, Brunei Shell, Shell Coal (now Anglo Coal Australia) in addition to being company secretary of many companies, a director of a large Queensland public company, experienced in international and corporate finance, a former trustee of two major international superannuation funds. I am a family man with a wife and 4 now adult children. I served 21 years with my employer from whose employment I was being paid the superannuation and other payments on my termination. I trusted in our APRA Approved Trustee system, our ASIC licensed Financial Advisers and our APRA licensed banks. I have been let down. I am suffering badly as a result of the unbelievable failures of our systems! I need help and trust that it will come. I appreciate greatly the work of the committee already and look to its fearless and determined efforts to help correct this very great wrong by CNAL APRA and ASIC.

I am reluctant to have to go to the courts, but at times see the courts as the only real hope for gaining justice in a country which prides itself in its "fair go" culture.. When the aged and aging are put in such perilous positions through disinterest and dishonesty at the highest levels SURELY IT IS TIME FOR ACTION.!
I appeal to the Committee to use its powers to correct a very correctable but precarious position for ourselves, and others.
I am willing to do more to help correct and bring the matter to justice.

The prudential supervision and consumer protection for superannuation (and some related aspects of banking) and financial services is in dire straits!