

PREFACE

In this, the Second Report on prudential supervision and consumer protection for superannuation, banking and financial services, the Committee examined a number of case studies, including four superannuation funds and solicitors' mortgage schemes in Tasmania.

After examining the case studies, the Committee has drawn the conclusion that they raise serious questions about the competence of some trustees, solicitors, financial advisers, valuers and auditors. In the view of the Committee this points to the need for not only improved standards of performance of the professions involved, but also for increased vigilance by the regulators, especially APRA, to oversight those areas within their responsibility and to respond more quickly when early warning signals of potential failure come to their attention.

The five case studies were:

- Queensland Employees Productivity Award Superannuation fund (EPAS);
- Queensland Hairdressers Association Superannuation Fund;
- Queensland Law Employees Superannuation Fund (LESF);
- Commercial Nominees of Australia Pty. Limited (CNA); and
- solicitors' mortgage schemes in Tasmania.

The three case studies in Queensland, which had problems in the 1990s, had already come to the Committee's attention when the inquiry commenced. Concerns about CNA's Enhanced Cash Management Trust were drawn to the Committee's attention in January this year by affected investors. This resulted in the Committee inviting submissions and holding a public hearing in March. In the period April–May, as a result of publicity in *The Mercury*, concerns expressed in the Tasmanian Parliament, and representations made to the Committee by affected investors, the Committee undertook its inquiry into solicitors' mortgage schemes. The Committee advertised the inquiry in the Tasmanian press and conducted hearings in Hobart in May and June. Following the taking of evidence from those affected by superannuation fund and mortgage scheme failures, two further hearings were held with the regulators in June.

In relation to the case studies involving superannuation funds, the Committee noted that they demonstrated:

- the need for higher standards of stewardship by trustees, who have prime responsibility for the prudent management of money entrusted to them by fund members;
- the importance of a transparent and diversified investment strategy, where investments are made at arm's length and are not purely speculative;

- the importance of appropriate and informed financial advice, which is based on sound product knowledge;
- the importance of appropriate and independent property valuations; and
- the importance of frequent, timely, thorough and independent auditing practices.

The case study of solicitors' mortgage schemes revealed similar issues, with the adequacy of the regulatory framework, the conduct of the Law Society of Tasmania, as well as the conduct of some valuers and financial advisers called into question.

All case studies highlighted the need for improved approaches to consumer protection by requiring improved awareness by consumers, improved communication by trustees and fund administrators to members and, in the case of solicitors' mortgage schemes, improved communication between the Law Society, solicitors and the investors. The cases also highlight the particular problems faced by small industry-specific superannuation funds with unpaid trustees.

In its First Report, the Committee commented at a broad level on the adequacy of the regulatory framework, the overall performance of APRA and ASIC, as well as some regulatory issues and some issues associated with the SIS legislation which came to its attention. In it, the Committee made a number of recommendations designed to improve the regulatory framework and APRA's oversight of trustees of superannuation funds.

In this Second Report the Committee has made more specific recommendations designed to address the specific issues arising from some of the individual case studies, especially Commercial Nominees and solicitors' mortgage schemes.

The Committee intends to present a Third Report under this term of reference on the subject of auditing of superannuation funds.

I commend the report to the Senate.

Senator John Watson

Committee Chair