CHAPTER 4

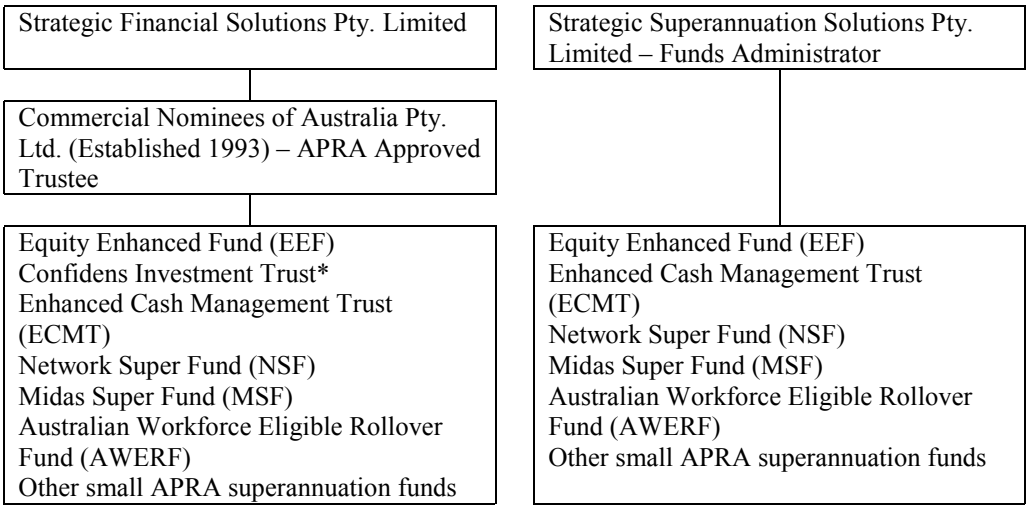
COMMERCIAL NOMINEES OF AUSTRALIA PTY. LIMITED

Background

4.1 Commercial Nominees of Australia Pty. Limited (CNA) was until recently the trustee of approximately 475 small APRA funds, a master trust known as the Confidens Investment Trust (Confidens), two trusts known as Enhanced Equity Fund (EEF) and the Enhanced Cash Management Trust (ECMT), and a number of corporate and public offer superannuation funds including the Australian Workforce Eligible Rollover Fund (AWERF), the Network Super Fund and the Midas Super Fund.[1] The total assets for which CNA was the Trustee were around $300 million.[2] CNA was an APRA approved trustee. An organisational chart of the CNA group of companies follows at Figure 4.1.

Figure 4.1: Organisational chart of Commercial Nominees of Australia Pty. Limited group of companies

POWER CAPITAL GROUP LIMITED (Established 1991)



*Flinders Asset Management Fund was the administrator of Confidens Investment Trust.
Source: Based on information in Submission No. 220, pp. 2-3 from the official liquidator.

4.2 CNA's management of the funds held in the ECMT appears to have been somewhat imprudent, with inappropriate investments in ventures such as a mushroom farm, and investments not always being at arm's length. As a result, the company suffered significant financial losses. Funds in the ECMT were frozen in November

1 Submission No. 220, p. 3.

2 Submission No. 225, p. 7.

2000 and pension payments drawn from this fund were stopped. CNA's licence as an APRA approved trustee was revoked, replacement trustees were appointed to the various funds, and the company was placed into liquidation in May 2001.[3]

4.3 The size of the loss caused by the collapse of CNA is estimated to be in the order of $25 million and has affected close to 25,000 investors.[4] Those mostly affected were the 475 or so small APRA funds, most of whom had invested funds in the ECMT.[5] These investors had placed their money into the ECMT mostly on the advice of financial advisors, including Saxby Bridge Financial Planning Pty Ltd. Several witnesses told the Committee that they were confident that investing with an APRA approved trustee was as safe as it could get.[6] For example, Mr Spencer Bell, one of the investors in the ECMT, told the Committee:

> We chose an APRA fund structure because the use of an APRA Authorised Trustee Company would ensure that our legal and regulatory obligations would be met. In addition the ongoing operation of the fund would continue to be supervised by APRA giving us a sense of security.[7]

4.4 The Committee was told during a public hearing held on 12 June 2001 that the value of the ECMT was estimated at 20 cents in the dollar[8], but that as at 20 April 2001, it was uncertain whether the funds were even going to be recovered. The Committee understands that for accounting purposes, the valuation has subsequently been reduced to 'nil'. [9]

4.5 The losses have caused major emotional and financial difficulties for a large number of people, many of whom placed their lifetime savings with CNA, expecting reasonable returns on their investment for their retirement. Some investors have been left feeling confused, helpless, angry, frustrated and have lost complete faith in the Australian system and for this they blame APRA and ASIC.[10] Mr Dominic Galati, an investor, told the Committee that as a result of the collapse of CNA and the loss of his

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3 In December 2000, Oak Breeze Pty. Ltd. (a PricewaterhouseCoopers trust company) was appointed acting trustee for the AWERF, and ACT Super Management Pty. Ltd. (a KPMG trust company) was appointed as acting trustee for the Network Superannuation Fund and the Midas Superannuation Fund. In February 2001, when CNA's license as an APRA approved trustee was revoked, Oak Breeze Pty. Ltd. replaced CNA as the trustee of nearly 500 small superannuation funds and Ferrier Hodgson Management Services was appointed as acting trustee of the EEF and the ECMT funds. CNA was replaced as trustee of the Confidens Investment Trust with Prentice Parberry Barilla.

4 Submission No. 225, p. 7.

5 Other investors suffered losses because of their exposure to both the ECMT and the Enhanced Equity Fund (EEF) as well as by exposure to the Confidens, the Strategic Income Trust, the Enhanced Income Trust and the Global Account funds. Submission No. 121, p. 2; Submission No. 225, pp. 7-8.

6 Committee Hansard, p. 905, Submission No. 113, p. 1.

7 Submission No. 99, p. 1.

8 Committee Hansard, p. 1104-5.

9 Submission No. 226, Annexure E, p. 2; Unaudited financial statement made available to the Committee.

10 Submission No. 103, p. 4.

superannuation funds which had been invested in the ECMT, he had to sell other assets in order to kick-start his allocated pension which to date he still had not received. He also said that he had 'to borrow heavily from family in order to live'.[11]

4.6 In addition, several investors, such as Mr John Crosby and Mr Richard Kaan and Mrs Jennifer Kaan, told the Committee of large out-of-pocket expenses incurred in legal costs, travel, communication expenses, as well as tax to be paid on investments, to pursue their complaints.[12]

4.7 A chronology of the events leading to the collapse of CNA is attached as **Appendix 1**. A breakdown of the ECMT's financial status as at 30 June 2000 is attached as **Appendix 2**.

Issues

4.8 During the course of the inquiry a number of issues were raised which highlighted the performance of CNA as trustee, the role of the regulators including the adequacy of the regulatory framework, as well as the auditing of superannuation funds. In addition, comments were also made about the role played by financial advisers and the replacement trustees.

Performance of CNA as a trustee

4.9 CNA, an APRA approved trustee, boasted a list of 'who's who' among its clients, including AMP, ANZ and Royal Sun Alliance.[13] Its investment strategies were developed between investors and financial advisers based on CNA's Key Features Statement. Money deposited with CNA was expected to be invested in reputable investments houses, such as BT International, Vanguard, Merrill Lynch. As part of the investment strategy, a proportion of the funds was also to be invested in cash.[14]

4.10 However, evidence to the inquiry suggested that there were a number of difficulties with CNA's investment strategy including:

- investments not being made at arm's length;
- investments being inappropriate;
- lack of information provided to investors with commensurate lack of accountability of the trustees to investors; and
- failure of trustees to notify APRA under section 106 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) of a significant adverse event.

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11 Submission No. 104, p. 1.

12 Committee Hansard, p. 878, Submission 102, p. 3.

13 Committee Hansard, p. 894.

14 Committee Hansard, p. 931, Submission No. 106, p. 1.

These issues are discussed in turn below.

Investments not at arm's length

4.11 Evidence to the inquiry suggested that investments were not made at arm's length. For example, Mr John Crosby in his submission claimed that 'some directors of CNA were directors of companies connected with a company, Australian Mushroom Farms Pty. Ltd, and loans were made to those companies and to CNA itself it seems as a co-borrower'.[15] Other evidence suggested that CNA was 'knowingly and intentionally not dealing at arm's length if it actually had an arrangement for the AWERF to stand behind the ECMT's liquidity'.[16]

4.12 In response to Committee questions on this issue, APRA advised the Committee that within the superannuation industry it is common for trustees of superannuation funds to also be trustees of other entities in which superannuation monies are invested. APRA further advised that the assets of the ECMT included loans to former directors of CNA and loans to related party trusts, which raised concerns that some transactions may not have been negotiated on an arm's length basis. However, APRA stated that it only became aware of the nature of the ECMT investment profile in March 2000 when approached by the new directors of CNA and that the issue continues to be under investigation.[17]

4.13 One of the replacement trustees, Ferrier Hodgson, in its report to APRA on the preliminary findings of its investigations into the ECMT and EEF, found that the existence of apparent conflicts and related party relationships appears to have 'frustrated the obligation of CNA to pursue the investments and/or loans or make other commercial arrangements'.[18]

Inappropriate investments

4.14 Witnesses also drew attention to a number of investment practices which they considered were inappropriate. For example Mr Phil Dally, General Manager, Saxby Bridge Financial Planning, said that 'it would appear that CNA used superannuation money to prop up investments made previously'.[19] Mr and Mrs Shuptrine told the Committee that they thought their money was held as 'cash at bank' only to discover later that the money 'was improperly and potentially fraudulently invested in speculative ventures, for example a mushroom farm, and these ventures now appear to be valueless'.[20]

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15 Submission No. 96, p. 6. See also Submission No. 107, p. 5.

16 Submission No. 138, p. 3.

17 Submission No. 225, p. 9.

18 Submission No. 226, Annexure E, p. 11.

19 Committee Hansard, p. 902.

20 Submission No. 146, p. 1.

4.15 As the investigator appointed by APRA in April 2000, Mr Peter Hedge of PricewaterhouseCoopers advised the Committee that CNA's investments included a retirement village development, a tomato farm and a mushroom farm development. In his view:

> These were long term investments, various tax driven schemes which had caused the unit trusts to lose their money and, thus, in turn to lose the superannuation funds' money.[21]

4.16 The Committee heard that financial records obtained indicated that virtually 100 per cent of the ECMT's investment and/or loans were in default with interest payments rarely received.[22]

4.17 According to Ferrier Hodgson, there is also evidence to suggest that CNA and its directors entered into transactions that involved the investment in assets that were long-term non-liquid schemes promoted within CNA at significant over value. Ferrier Hodgson submitted that:

> The commercial reasonableness of the investments and whether or not CNA as trustee has acted prudently given the nature of the security offered to investors, being totally dependent upon the success of the venture, is questionable. [23]

4.18 APRA advised the Committee that in the light of its experience with CNA, the regulator needed to place more emphasis on establishing the nature of underlying investments, the methods by which the investments are valued and the discipline the trustees have applied in determining the investment strategy.[24]

Lack of accountability - little consumer information or transparency

4.19 Witnesses were particularly alarmed at the lack of accountability of the trustees to the investors as the trustees apparently provided little information to the investors or may have misled investors about what was happening to their money.[25] For example, Mr John Crosby advised the Committee that:

> The cheques were cashed, and the instant they were cashed, they evaporated, … but the payments were apparently deliberately made into the known impaired ECMT! One suspects a high level of incompetency, or even unlawful conduct.[26]

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21 Committee Hansard, p. 1096.

22 Submission No. 226, Annexure E, p. 11.

23 Submission No. 226, Annexure E, p. 11.

24 Submission No. 225, p. 11.

25 Submission No. 99, p. 1; Submission No. 143, p. 1.

26 Committee Hansard, p. 880, Submission No. 96, p. 6.

4.20 Evidence to the Committee suggests that some of CNA's transactions, if not all, would also appear to be either unknown to the investor or contrary to the instructions of the investors and outside the scope of the agreed intended investment profile.[27] Mr Spencer Bell told the Committee that:

> Through negligence or otherwise, it has been confirmed that the investment instructions for our rollovers were ignored by the trustee and that all our rollover funds were instead placed into an Enhanced Cash Management Account.[28]

The trustees did not notify APRA under section 106 of SIS

4.21 It is a requirement under section 106 of the SIS Act for trustees to notify the regulator of significant adverse events which might impact adversely on the financial position of the entity no later than the third business day after becoming aware of the event. While CNA notified APRA of problems with three of its funds, it did not notify APRA of the impaired status of the ECMT. Amidst claims that APRA may have known about some of the problems at CNA as early as November 1999, it was not until March 2000, that APRA commenced investigations of CNA in relation to the prospect that three public offer superannuation funds may suffer substantial losses as a result of exposure to the EEF.[29]

4.22 Witnesses were concerned that money continued to be deposited into the ECMT even after APRA knew there was a problem. For example Mr and Mrs Kaan commented that:

> If APRA's attention was drawn to irregularities back in Feb 2000 by PricewaterhouseCoopers, why was nothing done for six months, during which the CNA directors piled good new money into a flawed, unapproved cash account?[30]

4.23 Mr Peter Hedge, the investigator appointed by APRA under section 257 of the SIS Act to undertake an independent review of the financial affairs of the three funds, advised that in his view CNA had failed to notify APRA that funds other than the three that were investigated also had impaired assets, thereby breaching the SIS Act.[31]

4.24 Ferrier Hodgson, the replacement trustee for the ECMT and EEF funds, told the Committee that in their view 'there was evidence to suggest that CNA and its directors were aware of the impaired nature of the trust assets from at least February

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27 Submission No. 226, Annexure E, p. 11.

28 Submission No. 99, p. 1.

29 Submission No. 197, p. 2 (the three funds were the Australian Workforce Eligible Rollover Fund, the Network Superannuation Fund and the Midas Superannuation Fund.

30 Submission No. 102, p. 3.

31 Submission 197, p. 2, and Committee Hansard, p. 1111.

1999. [32] However, APRA advised the Committee that the new directors of CNA only informed it of their concerns about the risky nature of investments undertaken by the ECMT in March 2000, and that this eventually led to the replacement of CNA as trustee of the three funds to which the investigator had been appointed.[33]

4.25 The Committee notes however that it was not until 14 February 2001, that is, almost a year later, that CNA's licence as an approved trustee was revoked by APRA.[34] During this period, although CNA ceased placing new superannuation money from the three funds under investigation into the ECMT, it did not cease putting new superannuation money from the small funds into the ECMT.[35]

Role of the regulator

Gaps in the regulatory framework – unclear demarcation between APRA and ASIC

4.26 Evidence to the inquiry suggested that there was a significant gap in the regulatory framework with the ECMT falling between the responsibilities of APRA and ASIC as the regulators.

4.27 The ECMT was set up as an excluded offer trust by CNA. ASIC advised that as an excluded offer trust, it was not subject to the managed investment requirements under the Managed Investments Act or the disclosure provisions of the Corporations Law.[36] The ECMT was therefore not under the supervisory control of ASIC.

4.28 APRA advised that the ECMT was also not an APRA regulated entity as APRA does not regulate excluded offer trusts, which are restricted to use by professional investors. APRA also advised that it was not made aware of the nature of the ECMT until approached by CNA in March 2000.[37]

4.29 In response to questions from the Committee about this apparent gap, neither regulator was able to quantify how many such investments fall outside the regulatory framework.[38]

Coordination between APRA and ASIC

4.30 One of the investors, Mr John Crosby, in evidence to the Committee, also pointed to his concerns about the effectiveness of the Memorandum of Understanding (MOU) between APRA and ASIC which delineates their lines of responsibility. Mr Crosby described the MOU as 'one of the most ineffective documents ever written'.

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32 Submission 226, p. 11

33 Submissions 197, p. 1 and 225.

34 APRA Press Release 14 February 2001.

35 Submission No. 225, p. 10; Submission No. 102, p. 3; Submission No. 143, p. 1.

36 Committee Hansard, p. 1124.

37 Submission No. 121, p. 2; Submission No. 225, p. 11.

38 Submissions No. 121, p. 2; Committee Hansard, p. 1134.

He suggested that deficiencies and failures in the systems, communication and consultation processes between the two regulators pointed to a need to update the MOU.[39]

4.31 The Committee also received evidence that these demarcation issues may have contributed to the delays in either regulator taking appropriate and timely action. For example, Mr and Mrs Kaan indicated in their submission that 'the position regarding the jurisdictions of APRA and ASIC over CNA and its cash fund are still murky and $300,000 of our savings have disappeared into that murk'.[40]

4.32 When asked whether there were grey areas between APRA and ASIC's responsibilities with respect to CNA, Ms Jan Redfern, Regional General Counsel with ASIC responded:

> No, I do not think so. I see it as fairly straightforward, in the sense that we deal with disclosure issues. APRA deals with, really, the governance issues in relation to trustee operating standards, regulations in relation to investment strategies. We deal with disclosure issues, reports, minutes of meetings, complaints.[41]

4.33 In evidence at the 12 June 2001 hearing, Mr David Knott, Chairman of ASIC, also stated that while each regulator has a mandate, the mandates are fundamentally different. He indicated that while the need for cooperation and information sharing was undisputed, the mere transfer of knowledge did not transfer the obligation to act from one regulator to another. Mr Knott added:

> ASIC had knowledge that APRA was concerned about CNA approximately eight months before we intervened in our own right. It was a superannuation problem involving an approved trustee which we understood to be under active scrutiny of the prudential regulator. Suggestions that we should have intervened a lot earlier are in our view unreasonable. [42]

4.34 According to Mr Knott, ASIC and APRA have recently progressed discussions to develop more specific protocols between the agencies in respect of referrals, to eliminate any misunderstandings about which agency has primary carriage of particular investigations or responsibility for their management. This will bring added focus to areas of potential overlap.[43]

4.35 The Committee understands that ASIC approved a revised set of the enforcement referrals protocols in July and that they are now with APRA for

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39 Submission No. 101, p. 2.

40 Submission No. 102, p. 3.

41 Committee Hansard, p. 1133.

42 Committee Hansard, p. 1129.

43 Committee Hansard, p. 1129.

consideration and comment, prior to a finalised set of protocols being executed by the agencies.

Early warning signals to APRA ignored

4.36 Evidence to the Committee pointed to a number of early warning signals which, even when drawn to the attention of both regulators, appeared to have been ignored. For example, witnesses claimed that:

- ASIC knew of CNA problems in June 1999, 18 months prior to the collapse, and APRA knew soon after, having been informed by ASIC;[44]
- APRA and ASIC admitted to a public hearing (21 and 22 February 2001) of the Senate Economics Legislation Committee that they knew of problems with CNA in November 1999, but that they 'did nothing since November 1999 to prevent people placing funds with CNA';[45]
- APRA was advised of problems with AWERF, Network and Midas (but not the ECMT) in March 2000, but did not revoke CNA's licence until almost a year later, that is 14 February 2001.[46]

4.37 According to the financial planners, Saxby Bridge Financial Planning Pty Ltd, APRA knew of the liquidity problem with ECMT but agreed with CNA to keep it quiet lest it result in a 'run' on the ECMT which would have exacerbated the problem. Mr Phil Dally, the General Manager of Saxby Bridge Financial Planning Pty Ltd told the Committee:

> We were told [by CNA] that with the tacit agreement of APRA, had they actually notified clients and/or advisers, that would have precipitated a run on the fund and the liquidity crisis that they were concerned about.[47]

4.38 Saxby Bridge was also informed by APRA that ASIC had told APRA of the problem around February 2000. However, APRA was not able to do anything about it because the information provided to the regulator contained no proof, and 'the regulators could not act without such proof'.[48]

4.39 APRA informed the Committee that in March 2000, CNA informed APRA of some 'management and operational problems with ECMT' and that 'a recovery program was in place … and CNA expected no loss'. APRA also informed the

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44 Submission No. 167, p. 1.

45 Submission No. 103, pp. 3-4; APRA subsequently corrected the evidence given at that public hearing by saying that the investigator was appointed in May 2000, not 1999, and that the report from the investigator was received in November 2000, not 1999.

46 Committee Hansard, p. 1095.

47 Committee Hansard, p. 895; Submission No. 107, p. 3.

48 Submission No. 107, p. 7.

Committee that 'APRA relied on assurances from the new Chief Executive [of CNA] to 'quarantine new business from the problems of the past'.[49]

4.40 When questioned by the Committee at a public hearing, APRA admitted that with hindsight, the investigation by Mr Peter Hedge into the three funds identified by CNA directors as having difficulties, had been too limited. According to Mr Phelps at the 12 June 2001 hearing:

> If I had my time over again, I would have given him [Mr Peter Hedge] wider terms of reference.[50]

4.41 In evidence to the Committee, ASIC chairman, Mr David Knott, said that the matter [of the problems with the ECMT] 'were first brought to ASIC's attention at the end of March 2000' and that ASIC had knowledge of the matter 'I might say at a relatively junior level of the organisation; nevertheless, it was institutional knowledge … our knowledge was not such as would have warranted our intervention'.[51]

Fees to APRA

4.42 Witnesses drew the Committee's attention to their disappointment in learning that whilst their fund had been paying fees to APRA in the expectation that APRA was regulating the trust fund, APRA was in fact not regulating the ECMT into which their funds had been placed. For example, Mr David McKellar in his submission to the Committee said that payment of the fee did not provide the protection that he expected, and that 'I was paying for something I did not receive'.[52]

4.43 When asked, APRA advised that levies collected are to cover its regulation of superannuation funds only, not the vehicles in which the superannuation funds invest (except pooled superannuation trusts). The fees collected by APRA were therefore used to regulate CNA as the trustee, not the ECMT.[53]

Auditing of superannuation funds

4.44 Superannuation funds are audited internally, by a fund's own auditor, and may also be subject to external audit by a regulator. Part 16 of the SIS Act outlines the responsibilities of actuaries and auditors of superannuation entities. Under section 129, the auditor of a superannuation fund is required to inform the trustee of any problems associated with the compliance of the entity with the Act or regulations, while under section 130 the auditor is required to inform the trustees of any concerns with the solvency of the entity and may tell APRA about the matter. Penalties apply for misleading information.

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49 Submission No. 197, p. 2.

50 Committee Hansard, p. 1178.

51 Committee Hansard, p. 1132.

52 Submission No. 113, p. 2.

53 Submission No. 225, p. 11.

4.45 Section 130 applies when:

> *the person forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and*
>
> *the person formed the opinion in the course of, or in connection with, the performance by the person of actuarial or audit functions under this Act or the regulations in relation to the entity.*

4.46 In respect of internal auditors, according to Mr Peter Hedge: 'an auditor's role is to comment on the accuracy and fairness of the accounts as presented by the entity as truly reflecting that entity's position'.[54]

4.47 In respect of external auditors, APRA indicated that in its view auditors feel that their skills and role are largely confined to expressing a view on the adequacy of financial statements and the financial controls in an organisation, rather than assessing risk.[55]

4.48 The Committee's attention was drawn to a number of difficulties with the auditing of the ECMT and the other funds administered by CNA. These include:

- the state of the financial records; and
- the frequency and timeliness of the audits.

4.49 For example, Saxby Bridge indicated that the records kept were less than satisfactory, and it would appear that the ECMT was not run as a trust, rather a 'pooled bank account'.[56] Ferrier Hodgson, one of the replacement trustees, confirmed the poor state of the financial records and said that a full reconstruction may be necessary in order to get a complete picture of the financial position of the fund.[57]

4.50 In relation to the frequency and timeliness of audits, Mr Peter Hedge advised that 'many of those unit funds had not been audited for more than two years because the trustee had not arranged and the auditor had not signed off on the audit reports'.[58] It also appears that APRA's action may have been delayed because it was waiting on a report from the auditors, which in turn was delayed because of an unsatisfactory state of the financial records of the group.

4.51 Arthur Andersen, as the auditor of the ECMT, advised that in respect of financial statements of the ECMT as at June 1999, 'we were satisfied that, as at that time the records kept were satisfactory to enable financial statements to be

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54 Committee Hansard, p. 1097.

55 Committee Hansard, p. 1267.

56 Submission No. 107, p. 6.

57 Submission No. 226, p. 12.

58 Committee Hansard, pp. 1097-8.

prepared'.[59] However, as of July 2001, Arthur Andersen had not yet received financial statements for the year ended 30 June 2000. The company has therefore not been able to fulfill the requirements under the Corporations Law.[60]

4.52 The Committee canvassed with witnesses a suggestion to improve the regulatory framework by requiring the auditor to go directly to the regulator (or shareholders) to inform the regulator of any shortcomings in the financial statements.

4.53 In response to this suggestion, Mr Peter Hedge replied that if this were required under legislation then that would be appropriate and if it is not required under legislation, 'then it is something you could look at.'[61]

4.54 In a submission to the inquiry, APRA called for more frequent prudential reporting as a means of giving APRA more timely and comprehensive information.

> The case for a major upgrading of prudential reporting arrangements – across the full range of superannuation funds – is compelling.[62]

4.55 As noted elsewhere in this Chapter, the Committee has identified the issue of auditing as one which requires further consideration. For this reason, the Committee has since conducted a Roundtable on auditing of superannuation funds with the regulators and peak bodies, and will report separately on that issue.

Financial advisers

4.56 Evidence to the Committee highlighted some concerns about the role of financial advisers in referring investors to CNA and the ECMT. These investors were concerned that they had accepted written recommendations from financial advisers such as Saxby Bridge to appoint CNA as the trustee of their DIY super fund and that apparently the financial adviser was unware of the problems with the ECMT.

4.57 Witnesses to the Committee alleged that the losses incurred through their investments with CNA, were 'a direct result of the recommendations of Saxby Bridge and APRA's and ASIC's supervisory incompetence' and that they had lost confidence in Saxby Bridge as a financial adviser.[63]

4.58 According to Mr Peter Hedge, financial advisers gave incorrect advice to investors to set up DIY or small APRA funds, understanding that this money was to be deposited in cash. Investors were told by financial advisers that they had to make out their cheques to, and deposit the funds into, a cash management trust. This advice was incorrect, yet it appears that many of the contributing members were led to

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59 Submission No. 222, p. 2.

60 Submission No. 222, p. 2.

61 Committee Hansard, p. 1098.

62 Submission No. 216, p. 6.

63 Submission No. 102, p. 4; Committee Hansard, p. 915.

believe that that was the only way in which they could invest their money with CNA.[64]

4.59 The Committee noted that one financial advisor, Saxby Bridge, had referred clients to CNA for a number of years; indeed the General Manager of Saxby Bridge made some personal investments through CNA and suffered losses similar to many of his clients.[65]

4.60 Saxby Bridge advised the Committee that it was not aware of any problems until notified in September 2000 by 'a third party'. Having been advised of the problem, Saxby Bridge was assured by CNA that a solution was underway regarding the liquidity problem of the ECMT. Accordingly, the firm continued to advise investors to direct their funds to the ECMT.[66]

Replacement trustee

4.61 In December 2000, Oak Breeze Pty. Ltd. replaced CNA as trustee of the three funds investigated by Mr Peter Hedge.[67]

4.62 Evidence to the inquiry suggested that there were significant concerns not only about APRA's procedures for the appointment of the replacement trustees, but also the fees charged. In particular, these concerns related to Oak Breeze Pty. Ltd. This firm, which is a PricewaterhouseCoopers trust company, was appointed as acting trustee to the some 475 small APRA funds, and acting trustee to the AWERF.

4.63 Several witnesses, such as Mr Kaan and Mrs Val Marshall, indicated that they had not been consulted about the appointment of Oak Breeze Pty. Ltd. and would have liked to have been consulted. Others, such as Saxby Bridge, indicated that although there had been an assurance from APRA that a tender process would be applied, this had not happened.[68] Investors were only informed after the appointment of the replacement trustee.

4.64 In response to these claims, APRA informed the Committee that consultation with some 500 small superannuation funds regarding the appointment of a replacement trustee 'would have imposed an inordinate delay on any appointment and would have left the funds 'in default' without a trustee'.[69]

4.65 Some investors also informed the Committee that they were not given any information about the fees that would be charged by the replacement trustees or the

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64 Committee Hansard, p. 1109.

65 Submission No. 118, p. 1.

66 Committee Hansard, p. 903; Submission No. 107, p. 3.

67 Submission No. 197, p. 4.

68 Committee Hansard, pp. 901, 913, 924; Submission No. 107, p. 8.

69 Submission No. 197, p. 6.

level of service that would be provided. They expressed their concern to the Committee that a fee of $10,000 would be charged by Oak Breeze Pty. Ltd.[70]

4.66 Witnesses were also concerned about the resources and availability of the replacement trustee to perform the duties in a timely and efficient way. In particular, concern was expressed about the capacity of Oak Breeze Pty. Ltd. to perform the task, as allegedly 'Oak Breeze had no staff, no systems and no resources to handle the funds …, they then started to recruit staff by first offering roles to ex CNA staff'.[71]

4.67 When questioned about this matter, APRA informed the Committee that Oak Breeze Pty. Ltd. had been appointed acting trustee of the AWERF and the 475 or so small superannuation funds with the task of bringing all funds to a level of compliance by 31 October 2001. APRA also informed the Committee that it had not issued any particular directions to Oak Breeze Pty Ltd., and that failing any unforseen circumstances, Oak Breeze Pty. Ltd. will retire as acting trustee by 31 October 2001.[72]

4.68 In response to claims about the fees, APRA informed the Committee that Oak Breeze Pty. Ltd. 'has not charged a fee of $10,000 but has requested each fund to have a cash balance of $10,000 to meet on-going costs of administration and liabilities of each fund'. The Committee was told that this would cover the cost of completing the auditing of the funds, preparing financial statements and tax returns including tax payable where appropriate. Further, the Committee was told that Oak Breeze Pty. Ltd. had engaged a large team of people due to 'the significant level of rectification required to bring the funds into compliance and the existence of the impaired assets'.[73]

4.69 APRA also raised the issue of the requirement under the SIS legislation for an approved trustee 'to have $5 million in Net Tangible Assets or use a custodian that has a minimum of $5 million in Net Tangible Assets'. In its submission to the Committee, APRA added that the legislation is 'silent on the capital requirements of an acting trustee'.[74] APRA also informed the Committee that 'the appointment by APRA of an acting trustee does not involve APRA in the payment of administrative costs of the funds to which the acting trustee is appointed', but that in the case of CNA, APRA 'is paying for the inspector who is assisting in the identification of recovery actions'.[75]

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70 Submission No. 143, p. 2.

71 Submission No. 107, p. 9.

72 Submission No. 225, p. 17.

73 Submission No. 197, p. 6.

74 Submission No. 233, p. 1.

75 Submission No. 225, p. 17.

Developments during the inquiry and some options

Section 229 of the SIS Act

4.70 One of the most significant developments during this inquiry was the lodgement by Oak Breeze Pty. Ltd., the replacement trustee, of an application under section 229 of the SIS Act for recompense of the losses suffered by investors.[76]

4.71 Under this section of the legislation, the Minister may grant financial assistance 'if a fund suffers a loss as a result of fraudulent conduct or theft … and the loss has caused substantial diminution of the fund leading to difficulties in the payment of benefits' and if the Minister determines that it is in the 'public interest' to grant such financial assistance.

4.72 Almost all the witnesses to the inquiry drew the Committee's attention to this provision, pointing out that the Act already provides this mechanism.

4.73 The application is currently being considered by the Minister, however it is not clear how many victims are covered by it.[77]

Allocated pensions

4.74 All allocated pensions, except one which has been returned to the accumulation phase as the recipient is still under 65 years of age, have been resumed, although it was drawn to the Committee's attention that the capital upon which the allocated pensions were based is at risk of being eroded due to the loss of funds in the ECMT.[78]

4.75 Further developments and initiatives now underway include:

- APRA is paying for 'the identification of recovery actions and assimilation of evidence for actions against individuals';[79]
- APRA has appointed (at its expense) an inspector whose role is to investigate and report to APRA on whether or not the losses suffered by these funds were attributable to 'fraudulent conduct or theft';[80]
- Jirsch Sutherland Chartered Accounts, the official liquidator of CNA, is looking into ways of recovering 'preferential payments' made to creditors in the period 6 October 2000 to 10 May 2001, as well as other voidable transactions;[81]

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76 Submission No. 225, p. 20. The Committee understands that other replacement trustees have also made application to the Minister for financial assistance under section 229 of the SIS Act.

77 Senate Hansard, pp. 25103-4.

78 Committee Hansard, p. 1108; Submission No. 225, p. 23 and informal advice to the Committee from an affected investor.

79 Submission No. 225, p. 20.

80 Submission No. 225, p. 20.

- ASIC is actively investigating aspects of the CNA collapse, including canvassing actions to recover monies;[82]
- Oak Breeze Pty. Ltd. has held meetings and sent reports to fund members advising them of the financial position of the funds and updating them on planned acting trustee activities;[83]
- ASIC is also investigating Saxby Bridge;[84] and
- A self-help support group has been established by those investors who have suffered losses as a result of the collapse of CNA.

Further options

4.76 In addition to the initiatives underway, described above, there is also the long-term option of ASIC seeking damages from the trustees, or the investors taking individual legal action to recover their losses. Further options to provide financial recompense have also been identified.

Indemnity insurance

4.77 CNA remains legally accountable under the statute and under general law, and had in force a professional indemnity insurance to protect the interests of members. Directors of CNA can be sued under their insurance policies. However, one of the exclusions under those policies is, effectively, the inclusions under section 229 of the SIS. That is, in the case of 'fraudulent conduct or theft', indemnity insurance is annulled.[85]

4.78 According to the new trustees of the ECMT, CNA's Professional Indemnity and Directors and Officers insurance policies were underwritten by HIH Insurance to 30 June 2000. New insurance was then taken out with Liberty International Underwriters. Ferrier Hodgson is currently pursuing real asset recoveries, including recovery action in relation to former CNA Director Loans prior to their appointment as trustee. [86]

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81 Submission No. 220, p. 3. The liquidator has subsequently advised that this task might be difficult due to the apparent inadequate record keeping.

82 Committee Hansard, p. 1130 - Actions undertaken to date include: service of 22 notices to CNA and associated parties requiring production of documents, all of which have been satisfied; compulsory examination of certain offices and related parties of the CNA group; voluntary interviews of potential witnesses; the freezing of CNA's bank account; court appointment of a receiver to, and the winding up of, the Confidens Investment trust, which is estimated to recover 80 cents in the dollar for investors; and assistance to the new trustee, Ferrier Hodgson, of the ECMT and the EEF in relation to 10 actions in the New South Wales District Court for recovery of monies from former directors and associates of CNA.

83 Submission No. 225, p. 17.

84 Committee Hansard, pp. 1107.

85 Committee Hansard, p. 1113.

86 Submission No. 226, Annexure E, p. 10.

4.79 APRA has also informed the Committee that the claims on CNA's professional indemnity insurance will be assessed by the acting trustees of the various affected funds, and that legal representatives for the acting trustees are currently investigating the complications arising from HIH's collapse and the transfer of CNA's indemnity insurance to Liberty International.[87]

Act of Grace

4.80 In situations where a government department or statutory body has failed to properly administer its responsibilities, the Minister for Finance and Administration can request Cabinet to approve an Act of Grace payment to help alleviate the consequences for those effected.[88]

4.81 Whilst there do not appear to be any specific provisions in the SIS Act for Act of Grace payments, Act of Grace payment provisions exist under section 33 in the *Financial Management and Accountability Act 1997*.

4.82 In response to questions from the Committee about this option, APRA advised that:

> APRA has responsibility for implementing the legislation and examination of the specific instances presents an opportunity to assess whether the implementation results in hardship or unfairness. However, as there have been no applications under section 229 to date, APRA is not in a position to comment on whether additional provisions such as Act of Grace payments are really appropriate or justified.[89]

Revise levy

4.83 A further options exists for the Minister to revise the current levy arrangements to provide for the establishment of an insurance scheme to cover small and DIY superannuation funds.

4.84 In the case where the Minister determines it to be in the 'public interest' to grant financial assistance to recompense the losses as a result of 'fraudulent conduct or theft',[90] such assistance can be made either from a special reserve or consolidated revenue. Where the Minister determines that assistance will be paid from a reserve, an additional levy of up to 0.05 per cent of total assets of each fund is imposed'.[91] To

87 Submission No. 225, p. 20.

88 "*Super Funds"* published by the Association of Superannuation Funds of Australia, No. 248, June 2001, p. 14.

89 Submission No. 225, p. 22.

90 Section 229 of the SIS Act.

91 Section 235 of the SIS Act.

date, section 229 has not been invoked nor has the levy been used, 'and the industry has until now provided relative security and confidence'.[92]

4.85 Instead of relying on the levy process that is cumbersome and time consuming, the Committee canvassed with witnesses the possibility of re-examining the current levy arrangements with a view to establishing an insurance scheme to cover failures of small funds and DIY funds. Such a scheme could be available to compensate in a more timely manner those aggrieved by fraudulent behaviour of trustees. It could be financed through an annual levy on all superannuation funds. For failures of larger funds, the current levy arrangements provided by SIS would continue to apply.

4.86 Both regulators, APRA and ASIC, advised that these issues are a matter for government. APRA further advised that the provision in section 229 of SIS, 'through the ability to levy the industry, has the usual feature of an insurance scheme … the extension of such a compensation scheme to cover losses that were more broadly defined than 'fraudulent conduct or theft' would be a major change in government policy' and that by comparison there is no such insurance scheme for deposit-taking institutions.[93]

Conclusions and recommendations

4.87 The failure of CNA with the consequent devastating personal and financial effect on the investors of ECMT and others, has undermined the confidence in the community about the safety of superannuation savings. Together with recent corporate collapses such as HIH Insurance and One.Tel, this has highlighted the need for improved regulation of Australia's superannuation system.

4.88 The Committee is keen to ensure that the risk of such failure happening again is reduced in order to restore confidence in Australia's superannuation system and to protect Australia's consumers and investors.

Prudential supervision of trustees

4.89 As noted in the Committee's First Report on Prudential Supervision and Consumer Protection for Superannuation, Banking and Financial Services, the Committee considers that APRA needs to be more vigorous in its approach to its oversight of trustees to ensure that trustees abide by the standards required to protect the best interests of fund members.

4.90 The Committee further considers that it is vital for trustees to improve their communication with investors. The Committee considers that more frequent reporting to members would enhance the accountability of the trustees to the investors and

92 "*Super Funds"* published by the Association of Superannuation Funds of Australia, No. 248, June 2001, p. 14.

93 Committee Hansard, p. 1131; Submission No. 225, p. 20.

increase the transparency associated with the fund's performance and investment strategy.

4.91 In the Committee's view, the trustee should also improve their communication with the regulator, in particular by notifying the regulator under section 106 of the SIS Act of any significant adverse events which might have an adverse effect on the financial entity, even if the impaired fund does not directly come under the regulatory responsibility of APRA. The Committee notes that if CNA had advised APRA of problems with the ECMT when they advised the regulator of problems with the three other funds, then early intervention by the regulator may have prevented a further deterioration of the ECMT's financial position and reduced the extent of the losses suffered.

The regulatory framework

4.92 The Committee notes that a weakness in the SIS regime contributed to the problems experienced by investors in the ECMT. Of particular concern is that while APRA had prudential responsibility for some of the funds under the trusteeship of CNA, the ECMT fell outside APRA's regulatory responsibilities.

4.93 The Committee is concerned to discover that the extent of funds which fall outside the regulatory framework could not be quantified by either regulator. The Committee recognises that within the superannuation industry there may be a large extent of 'co-mingling' of superannuation funds with other funds. It is difficult therefore to have legislation specifically dealing with measures to protect superannuation investments.

4.94 The Committee is concerned to ensure that all those funds that exhibit the features of a superannuation fund, whether excluded or otherwise, come within the regulatory framework. The Committee considers that the investments made through the ECMT were intended to provide an income stream in retirement. For this reason the Committee considers that the ECMT should have come under the prudential regulation of APRA.

4.95 The Committee is of the view that in order to avoid a repetition of the CNA failure, it would be useful to broaden the provisions of the SIS Act to bring a wider range of pension and retirement annuity products under the regulation of APRA. The Committee has made a recommendation to this effect in its First Report where it has specifically recommended broadening the grounds under which applications could be made under section 229 of the SIS Act.

4.96 The Committee also considers that tightening the requirements applying to trustees under section 106 the SIS Act to require them to notify the regulator of any significant adverse event which might impact on any superannuation product under APRA's regulation would provide greater protection for fund members and investors alike.

4.97 The Committee notes that civil and criminal consequences apply to contravention of this section of the Act. The penalties applying in the case of civil and criminal matters are outlined in Part 21 of the SIS Act. In accordance with these penalties, the maximum penalty for a civil offence is currently $220,000, while for a criminal offence, the maximum penalty is five years' imprisonment.[94] The Committee is concerned to ensure that the penalties applying to a trustee who fails to notify APRA of a significant adverse event are appropriate.

4.98 In addition to broadening the provisions of the SIS Act, the Committee considers there is also scope to amend and extend the *Managed Investments Act 1998* so that it provides for investment funds generally the same degree of protection that is sought for superannuation investments. This would broaden the supervisory responsibility of APRA and widen the scope for closer and more harmonious collaboration between APRA and ASIC.[95]

4.99 The Committee also considers it incumbent upon the regulators not only to identify gaps in the regulatory framework but also to advise government on any gaps identified so that any deficiencies in the regulatory framework can be remedied.

Recommendations

4.100 The Committee recommends that the *Superannuation Industry (Supervision) Act 1993* be amended to tighten the requirements applying to trustees to ensure that trustees notify the regulator of any significant adverse event which might impact on any superannuation product under APRA's regulation.

4.101 The Committee recommends that the *Managed Investments Act 1998* be amended to ensure all funds that invest monies for superannuation purposes come within the regulatory framework supervised by APRA.

Performance of the regulators

4.102 The Committee considers that APRA as the regulator did not act in a sufficiently timely manner when the problems of CNA and the ECMT were drawn to its attention. The Committee is concerned that APRA's lack of timely actions in revoking CNA's licence as an approved trustee may have exacerbated the losses incurred by investors. These investors continued to put money into a fund which apparently was already impaired and while it was under investigation by APRA.

4.103 The Committee is particularly concerned at APRA's apparent failure to respond in an appropriate manner to early warning signals that the fund was in

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94 See sections 196 and 202 of the SIS Act. The civil penalty is calculated on the basis of 2,000 penalty units, which are currently set at $110 per unit.

95 The Minister for Financial Services and Regulation, the Hon. Joe Hockey, MP, has announced a review of the Managed Investments Act and will report to Parliament by 31 December 2001.

difficulty. The Committee considers it vital for APRA to take a more proactive approach towards, and a broader view of, its statutory responsibilities so that it can provide more effective prudential supervision. Had APRA responded in a proactive way and widened the investigation to include all those funds under CNA's trusteeship, not just the three funds identified by CNA, the problems with the ECMT may have been detected sooner and the losses may have been contained.

4.104 The Committee notes that, in addition to gaps in the regulatory framework, there was also an apparent lack of coordination between the regulators, APRA and ASIC, which may also have exacerbated the extent of the losses suffered.

4.105 The Committee notes that the mandates of the regulators are fundamentally different, however, the issues raised have highlighted the need for increased cooperation and information sharing between the regulators.

4.106 Although it has not yet been finalised, the Committee welcomes the work now underway by ASIC and APRA to develop more specific protocols to delineate responsibilities more clearly, in particular which agency has primary carriage of a matter referred. The Committee considers it vital to improve coordination and information sharing between the regulators. In the view of the Committee, more specific protocols will provide greater assurance of a more robust regulatory framework.

Management of investments

4.107 In the view of the Committee, one of the main problems associated with CNA and its trusteeship of the ECMT was the investment approach undertaken by the trustees. The Committee considers that the underlying problem of CNA's investments is that they were operating under the old trustee manager regime. Had the investments been made under the Managed Investments Act, the problems may not have occurred, because of the controls that exist under that Act. For example, the Managed Investments Act requires a registered managed investment scheme to invest only in approved schemes. While under the Act an investment can still be made for example in a mushroom farm, this can only be done if structured under a Managed Investment Act vehicle/arrangement which provides:

- the protection of having independent directors;
- compliance plans;
- prospectuses;
- continuous disclosure; and
- increased ASIC supervision.

4.108 The Committee notes that APRA is currently giving consideration to imposing stricter guidelines on the spread of fund investment portfolios. The Committee encourages efforts by the regulator to have stricter guidelines as this may mitigate the risk of fund failure.

Auditing of superannuation funds

4.109 The Committee notes that there appeared to be a number of difficulties with the auditing of the ECMT and other funds. In particular, it does not appear that the audits were conducted frequently enough to provide assurance to the trustees about the financial viability of the company. The Committee considers that more frequent auditing, such as twice per year, may provide greater assurance to trustees and mitigate against possible fund failure.

4.110 The Committee notes that it may also improve the prudential and auditing reporting standards of superannuation funds if auditors were to take a broader look at the financial statements of the funds and include some interpretation of the figures in terms of potential risk in their report rather than merely providing a set of numbers.

4.111 The Committee finds it unacceptable that some auditors apparently feel that their skills and role are largely confined to expressing a view on the adequacy of financial statements and controls, rather than assessing the risk. In the view of the Committee, auditors must advise the regulator immediately if there is any suggestion of a risk to the financial position of the entity. Whether there is a need to strengthen the SIS Act to require auditors to advise APRA in such circumstances is one of the issues which the Committee has explored at the roundtable on auditing of superannuation funds held on 23 August 2001.

4.112 As noted above, the Committee considers that more frequent audits could help to mitigate the risk of financial failure by identifying problems early. The Committee welcomes the fact that during the inquiry APRA called for a major overhaul of the prudential reporting of superannuation funds, including the possibility of requiring more frequent audit reports.

4.113 In its First Report on Prudential Supervision and Consumer Protection for Superannuation, Banking and Financial Services, the Committee identified the auditing of superannuation funds as an issue which requires further consideration. For this reason, as previously noted, the Committee determined to hold a roundtable with peak bodies and the regulators to discuss the standards of auditing of superannuation funds. The Committee will present a separate report on auditing of superannuation funds.

Financial Advisers

4.114 The Committee notes that many people rely on the advice of financial advisers in relation to their investment strategies. This case study has highlighted the difficulties faced by financial advisors who, on the one hand, seek to provide appropriate and informed advice to investors while, on the other hand, may be hampered by a lack of reliable information about the products on offer.

4.115 In relation to solicitors' mortgage schemes, the Committee found that financial advisers did not always appear to evaluate the products being recommended

and that this contributed to the difficulties experienced by investors in Tasmania. This will be discussed in the next chapter.

Replacement trustee

4.116 The Committee notes that significant concerns were raised during the inquiry about APRA's procedures for the appointment of the replacement trustees. The Committee considers that there would be merit in APRA following a more transparent process.

4.117 On the question of fees charged, the Committee notes that there may have been some misunderstanding on behalf of those drawing the matter of fees to the Committee's attention. Nevertheless, the Committee is of the view that the request by the replacement trustee for each fund to provide $10,000 to complete the audit and render the superannuation funds compliant, seems to be excessive, given that it has been requested of people, some of whom have lost almost all of their life's savings due to the collapse of CNA. Many of the investors may have to sell other assets in order to raise the $10,000, and this would add further to the financial difficulties in which these people already find themselves. The Committee suggests that the $10,000 fee be waived and that the cost of rendering the 475 or so small superannuation funds compliant be borne by APRA.

Recommendation

4.118 The Committee recommends that the $10,000 fee requested by the replacement trustee of Commercial Nominees of Australia Pty. Limited be waived and that APRA bear the cost of rendering the small superannuation funds compliant.

Options for financial recompense

4.119 The Committee notes that there are a number of options to provide financial recompense to those affected by the collapse of CNA. However, the Committee considers that few of the current options offer an immediate and timely solution. The immediate priority is financial relief for all those affected by this financial tragedy. The two options that are most likely to provide an immediate solution are for the relevant Minister to make an Act of Grace payment, or to grant financial assistance under section 229 of the SIS Act. The Committee notes that an application has been lodged with the Minister under section 229 of the SIS Act, and urges the Minister to expedite consideration of the application. The Committee notes that this section requires that assistance is only provided if the Minister is satisfied that, on the balance of probabilities, the loss is attributable to fraudulent conduct or theft, and that it is in the public interest to do so.

4.120 In the First Report, the Committee has recommended that the Minister act expediently and efficiently in making a decision under the SIS Act to grant financial assistance. Because of the urgency associated with minimising both the emotional and financial hardship that the investors in the ECMT have suffered, and the need to

restore community confidence in superannuation savings, the Committee urges the Minister to expedite the application lodged under section 229 of the SIS Act by the trustee of CNA.

Recommendation

4.121 The Committee recommends that the Minister for Financial Services and Regulation expedite the application lodged under section 229 of the *Superannuation Industry (Supervision) Act 1993* by the trustee of Commercial Nominees of Australia Pty. Limited on behalf of the affected investors.

4.122 The Committee notes that there is also an option under the *Financial Management and Accountability Act 1997* for the Minister for Finance and Administration to make an Act of Grace payment 'if the Minister considers it appropriate to do so because of special circumstances'. Notwithstanding that the Minister must first consider a report of an Advisory Committee set up under section 59 of the Act if the total amount involved is more than $100,000, this option may provide more immediate relief to some of those waiting on the outcome of the section 229 application.[96]

4.123 The Committee considers that those investors who were investing with an APRA approved trustee are entitled to a degree of support from the government if the investment in what is essentially a government-approved trustee has failed. The Committee believes that it is essential to maintain confidence in Australia's system of superannuation savings. Given that superannuation is a compulsory aspect of Australia's three pillar retirement incomes system, it is incumbent upon the government to provide redress when its approved prudential regulatory framework has let down investors.

4.124 However, were the Minister for Finance and Administration to agree to an Act of Grace payment, any amount received by any of the investors should be deducted from any subsequent compensation payment made to them under section 229 of the SIS Act.

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96 Section 59: Advisory Committees for reporting on large waivers etc.

1) An Advisory Committee for the purposes of this Act consists of:
   a) The Chief Executive Officer of Customs;
   b) The Secretary to the Department of Finance; and
   c) The Chief Executive of the Agency that is responsible for the matter on which the Committee has to report.
2) If there is no Agency responsible for the matter, of if the responsible Agency is the Department of Finance or the Australian Customs Service, then the Chief Executive of the Department of Administrative Services is to be the third member of the Committee.
3) A member of an Advisory Committee may appoint a deputy to act in his or her place.
4) An Advisory Committee may prepare its report without having a meeting.

4.125 The Committee notes that those seeking to access a part pension through Centrelink during the time that their investments have been frozen appear to have been denied access to the part pension because their investments although frozen, were deemed to be assets. The Committee encountered this issue during its examination of solicitors' mortgage schemes. Centrelink clarified that investors who lost money through failed schemes can apply for social security assistance where pensions are affected. The Committee welcomes this flexible approach demonstrated by Centrelink as access to part pensions has the potential to alleviate immediate financial distress for some.

Consumer protection

4.126 The Committee notes that there was a great deal of confusion on the part of investors regarding the status of the ECMT. The Committee understands why investors thought that by investing with an APRA approved trustee their investments would be safe. However, what was not clear was that the investment vehicle, through which their funds were channelled, fell outside APRA's responsibility. This was not drawn to the attention of the investors either by the company or the financial advisers or the regulators.

4.127 The Committee considers that more consumer information should be provided by APRA, in plain English, about APRA's roles and responsibilities. The Committee notes that currently some information is available from APRA's website. However, the Committee is of the view that APRA could be more pro-active in taking steps to improve community awareness of APRA's role within the current framework of the prudential regulation of Australia's financial sector.

4.128 The Committee considers that the publication of the liquidator's final report will no doubt help to shed light on what went wrong in the administration of CNA's funds and provide a useful lesson and guidance to trustees of other funds of the pitfalls to be avoided in the administration and management of superannuation funds.

Overall conclusion

4.129 The collapse of CNA, concurrent with that of HIH Insurance and other high profile corporations, have made a severe dent in the confidence of the prudential regulation of Australia's financial sector. This is particularly pertinent to the superannuation industry. Superannuation is an integral part of the government's retirement incomes strategy, indeed it is compulsory to contribute towards it in order to provide a degree of independence for retirees and reduce government spending on age pensions. As the significant financial loss has occurred due to the shortcomings of the government's own regulators, as demonstrated in this report, the Committee is of the view that it is incumbent upon government to take immediate steps to provide financial relief to those affected by the losses, and to give urgent consideration to legislative changes that would strengthen Australia's prudential regulatory framework and minimise the risk of similar events happening in the future. As Australia's superannuation pool of money continues to grow it becomes even more imperative

that adequate measures and prudential regulation are in place to safeguard an increasingly significant amount of money.