The Parliament of the Commonwealth of Australia

PRUDENTIAL SUPERVISION AND CONSUMER PROTECTION FOR SUPERANNUATION, BANKING AND FINANCIAL SERVICES

SECOND REPORT - SOME CASE STUDIES

SENATE SELECT COMMITTEE

ON SUPERANNUATION AND FINANCIAL SERVICES

August 2001

Commonwealth of Australia

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TERMS OF REFERENCE

On 22 September 1999 the Senate resolved that:

(1) A Select Committee on Superannuation and Financial Services be appointed with effect on and from 11 October 1999, with the same functions and powers as the Select Committee on Superannuation appointed by resolution of the Senate on 5 June 1991, and reappointed on 13 May 1993 and 29 May 1996, except as otherwise provided in this resolution.

(2) The committee inquire into matters pertaining to superannuation and financial services referred to it by the Senate and inquire initially into:

(a) prudential supervision and consumer protection for superannuation, banking and financial services;

(b) the opportunities and constraints for Australia to become a centre for the provision of global financial services; and

(c) enforcement of the Superannuation Guarantee Charge;

and report on paragraphs (a), (b) and (c) by the last day of sitting in June 2000.*

(3) The committee have power to consider and use for its purposes the minutes of evidence and records of the Select Committee on Superannuation appointed in the previous three Parliaments.

(4) The committee consist of seven senators, three nominated by the Leader of the Government in the Senate, two nominated by the Leader of the Opposition in the Senate and one nominated by other parties or independent senators.

(5) The nomination of the final member to be determined by agreement between the other parties and independent senators and, in the absence of agreement, duly notified to the President, the question of representation on the committee of other parties or independent senators be determined by the Senate.

(6) The Senate, by subsequent resolution, appoint a member of the committee as its chair.

*(On 8 June 2000 the Senate granted an extension of time in which to report to 7 December. On 6 November 2000, the Senate granted a further extension of time in which to report to 15 March 2001. On 6 March a further extension was granted to 24 May 2001. On 23 May 2001 a further extension was granted to 27 September 2001.)

TABLE OF CONTENTS

CHAPTER 4

COMMERCIAL NOMINEES OF AUSTRALIA PTY. LIMITED

CHAPTER 5

SOLICITORS' MORTGAGE SCHEMES IN TASMANIA

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

RECOMMENDATIONS

Queensland case studies

1. The Committee recommends that, in conjunction with APRA, the Queensland State Government, through the Department of Industrial Relations and in consultation with the Queensland Industrial Relations Commission and the Queensland Industrial Court, conduct a review of all superannuation provisions in State awards and agreements with a view to ensuring their consistency with national standards. (paragraph 3.30)

2. The Committee recommends that, in conjunction with APRA, all other State Governments conduct a similar review of all superannuation provisions in their own State awards and agreements with a view to ensuring their consistency with national standards. (paragraph 3.31)

Commercial Nominees of Australia Pty. Limited

3. 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. (paragraph 4.100)

4. 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. (paragraph 4.101)

5. 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. (paragraph 4.118)

6. 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. (paragraph 4.121)

Solicitors' mortgage schemes

7. The Committee recommends that ASIC work with both the Tasmanian Government and the Law Society to devise strategies for the ongoing management of McCulloch and McCulloch and Lewis Driscoll and Bull to the benefit of the clients awaiting compensation. (paragraph 5.128)

8. The Committee recommends that ASIC work with State governments and relevant law societies to ensure that appropriate strategies are developed for the supervision of mortgage investment funds with fewer than 20 members which will continue after 31 October 2001. (paragraph 5.129)

9. The Committee recommends that the Tasmanian Government further review the *Legal Profession Act 1993* in order to ensure that the benefit of the amendments to the *Legal Profession Act 1993* and the *Freedom of Information Act 1991* are available to the clients who have lost funds, as well as those who may do so in the future. The review should also consider the following areas:

- **disciplinary procedures and penalties for legal practitioners who are guilty of professional misconduct;**
- **complaints procedures, including independent investigative powers by a separate body;**
- **regular independent audits of legal practices;**
- **consumer information; and**
- **a requirement that the Law Society of Tasmania be subject to regular reviews conducted by an external unrelated body. The reviews should focus on the extent to which the Society meets its statutory obligations to its members and their clients. (paragraph 5.153)**

10. The Committee recommends that the Law Society of Tasmania adopt a more strategic, open and less rigidly insular approach to its relationships with consumers as well as its members. (paragraph 5.154)

11. The Committee recommends that the Tasmanian Government improve access to compensation for all victims of failed solicitors' mortgage schemes. (paragraph 5.159)

12. The Committee also recommends that the Tasmanian Government continues to ensure that the Solicitors' Guarantee Fund is maintained at a level which is sufficient to meet anticipated needs. This might include legislating to require solicitors to contribute in advance to the fund to ensure an appropriate level of liquidity. (paragraph 5.160)

13. The Committee recommends that the Tasmanian Government:

- **evaluate the proposal developed by the Australian Property Institute with a view to incorporating its features in its review of the *Valuers Registration Act 1974*; and**
- **consider amending the solicitors' Rules of Practice to require solicitors to obtain more than one valuation for properties securing mortgages under the solicitors' mortgage schemes. (paragraph 5.165)**

14. The Committee recommends that financial advisers ensure that the consumer information provided to investors in mortgage schemes is concise, in plain English, thoroughly researched and complies with ASIC disclosure and information requirements. (paragraph 5.169)

15. The Committee recommends that ASIC and Garrisons Financial & Retirement Specialists ensure that compensation payments to be made under the rescue package negotiated between ASIC and Garrisons are made to clients without delay. (paragraph 5.172)

CHAPTER 1

EMPLOYEES PRODUCTIVITY AWARD SUPERANNUATION

Background

1.1 The Employees Productivity Award Superannuation fund (EPAS) is an industry superannuation fund for people in the hospitality industry in Queensland. The fund has approximately 26,000 members, most of whom are young hospitality workers. The Committee understands that the fund was established in the late 1980s and that it is a public offer fund with an independent corporate trustee. The Committee also understands that Mr Gerald Parker was appointed as a director of the trustee company EPAS Ltd in 1996. It was reported that the value of the fund had been reduced from $27 million in 1997 to $18 million when the fund was frozen in 1998.[1] Members are believed to have lost 51 per cent of their entitlements.[2]

1.2 The Committee understands that the Hotel Motel Accommodation Association of Queensland (HMAA Queensland) was involved in promoting the fund to potential members. In response to a Committee request for further information, HMAA Queensland stated that it had 'no connection with the EPAS fund', but that as EPAS was listed as one of the options in Queensland industrial awards and agreements, 'as such this was advised to our members when seeking information as to their options'. HMAA Queensland stated that it sought advice about the fund from an industrial advocate in 1987, and that EPAS 'appeared to have advantageous benefits over other available funds, such as lower administrative charges, higher death and disability cover etc'. EPAS thus became 'a popular choice' of HMAA Queensland members to meet their superannuation guarantee obligations. [3]

1.3 A submission to the Committee from Voyager Resort Ltd,[4] an employer which had contributed to the fund on behalf of 26 of its employees, said that its concern was first raised in 1995 when returns 'began to dip'. The company detailed the following financial information about the fund's performance.

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1 *The Courier Mail*, 24 April 2000, p. 7.

2 ASIC "ASIC seeks $10 million from EPAS, Directors and Auditors" *Media Release,* Thursday 20 April 2000.

3 Submission No. 67, p. 1.

4 Submission No. 43, p. 1.

Table 1.1: EPAS – Returns to members 1993-1998

Year	Return
1993	9.75%
1994	10.50%
1995	8.00%
1996	9.00%
1997	4.25%
1998	–43.00%

1.4 In subsequent evidence to the Committee in June 2000, Mr Heaton, Company Secretary and General Manager of Voyager Resort Ltd, stated that the fund's last annual statement (as at 30 June 1999) reflected an opening balance that had decreased by a further 13 per cent and showed a nil credit rating for the fund.[5]

1.5 Voyager Resort Ltd's submission alleged various poor investment decisions by the trustees of the fund:

- One of the fund's investments in O'Hara's Resort in Launceston appeared, in Voyager Resort's opinion, to be 'a transaction lacking good advice [or a] reasonable valuation'. The vendor was allegedly also known to the then trustees.[6]
- The purchase price of another of the fund's investments in industrial property in Queensland was, in Voyager Resort's opinion, inflated by $2.5 million.
- Details of substantial 'asset management fees' ($450,000 in 1997 and $535,000 in 1998) and consultancy fees (over $37,000 in 1997 and 1998) paid to individual trustees were not forthcoming upon enquiry to the fund.

1.6 Mr Heaton told the Committee that APRA had started to look at the fund in 1995 (although the Committee notes that the responsible body would in fact have been the former ISC, from which APRA took over in 1998):

> The warning bells were there at that time, but the fund as an investment tool for retirees continued to travel in the wrong direction.[7]

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5 Committee Hansard, p. 522.

6 The Committee notes a media report that the Launceston property was bought in 1995 for $2.4 million and nearly $5 million was spent on refurbishment, although the property was subsequently valued at $2.04 million (*The Examiner*, 25 February 1999, p. 16). A later media report stated that $6.04 million had been lent to develop the property but that only $135,000 had been repaid (*The Courier Mail*, 27 April 2000). The property was sold in 2000.

7 Committee Hansard, p. 522.

1.7 The Committee understands that in 1995 the former ISC decided, following a visit to EPAS and an internal report, to try to rehabilitate the trustee rather than putting a replacement trustee in place.

1.8 In August 1998, the trustee EPAS Ltd advised APRA of a 'significant adverse event',[8] namely the large negative return for 1997/98 and a subsequent freeze on withdrawals from the fund.[9] In September 1998, the fund administrators advised members that the trustees had decided to close the fund and freeze the assets.[10]

1.9 HMAA Queensland stated:

> This came as a shock to the association and its members as many of our employer members were also members of the fund as employees of their own properties. Many of our members had used the fund to put aside significant additional funds for their retirement. This was as devastating to the employers as it was to the employees.[11]

1.10 The Committee understands that EPAS Ltd sought legal advice as to whether members should be transferred to a successor fund, but after receiving this advice decided the option was not viable. In January 1999 EPAS Ltd advised members of its revised plans to:

- re-open the fund to new members;
- conduct a sale of assets using external professional advice; and
- continue the freeze on contributions prior to June 1998, but allow all post-July 1998 contributions to be rolled out of the fund at a member's request.[12]

1.11 EPAS Ltd resigned as trustee in May 1999 and was replaced by Trust Company Superannuation Services Ltd. ASIC reported that the new trustee had 'carried out a review of the fund and has focussed on maximising the fund's assets'.[13] In October 1999 the new trustee had issued a media release (also mailed to members), advising of its proposals to improve the fund's viability, introduce member investment choice and implement the asset realisation program.[14] In December 2000, the fund's annual report for the year ending June 2000 advised members, amongst other things, that the asset freeze for fund members as at 30 June 1998 would continue, subject to review by the board every six months, but most likely until the asset realisation

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8 As required by SIS Act s. 106.

9 Submission No. 109, p. 5.

10 Submission No. 67, p. 2.

11 Submission No. 67, p. 2.

12 Submission No. 109, p. 5.

13 ASIC "ASIC seeks $10 million from EPAS, Directors and Auditors" *Media Release,* Thursday 20 April 2000.

14 Submission No. 109, p. 5.

program was complete.[15] Member choice of investment had been introduced during that financial year. APRA noted that the annual report identified four single investments as each representing more than 5 per cent of fund assets, but did not specifically identify the sale of the O'Hara's Resort property.[16]

1.12 Following an investigation into the fund's losses, ASIC commenced civil proceedings in the Queensland Supreme Court in April 2000 against the former trustee EPAS Ltd, its directors and the 1995-1996 auditors of the fund.[17] The matter has not yet been heard.

1.13 ASIC has alleged that between 1994 and 1999, EPAS Ltd and its directors approved the investment of fund assets in mortgage loans that included:

- imprudent and speculative trustee investments;
- loans which were not made on an 'arm's length' basis because there were undisclosed fees and profit sharing interests of directors;
- loans which were not always based on independent valuations;
- loans which were not based on a reasonable debt to equity ratio;
- loans which were approved without adequate security or borrower inquiries; and
- loans which were approved in the absence of an investment strategy that complied with the law relating to superannuation funds.[18]

1.14 ASIC is seeking declarations that EPAS Ltd and its directors must restore trust assets of more than $10 million plus interest which was lost or diminished as a result of investment decisions.

1.15 ASIC has also alleged that the auditors, Head, Cheel Thompson, were negligent in preparing their 1995 and 1996 audits of EPAS, that their work did not comply with Australian Auditing Standards, and that there were material overstatements of the investments and related accrued interest in the fund accounts.

Issues

1.16 An obvious concern in this case study, as in other evidence discussed in the Committee's First Report, is the competence of some trustees to perform their duties effectively. As Mr Heaton stated in evidence to the Committee:

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15 Submission No. 109, p. 6.

16 ibid.

17 The action has been taken under ASIC's governing legislation, the *Australian Securities and Investments Commission Act 1989,* under which ASIC can start an action in the public interest on behalf of the past and present trustee.

18 ASIC "ASIC seeks $10 million from EPAS, Directors and Auditors" *Media Release,* Thursday 20 April 2000.

> If you are a trustee of a fund, you need to understand that you have got a heck of a responsibility to look after members' funds and you do not go out willy-nilly shaking hands and doing deals. How good is the business acumen of some of these people who are running funds with multimillion dollars in cash?[19]

1.17 Another key complaint was that the EPAS fund trustees did not provide timely information or respond to complaints from members, and that APRA and ASIC subsequently also were remiss in making information available. HMAA Queensland referred to its frustration in getting adequate information from the trustees and later from APRA:

> We sought answers from the trustees and invited the Chairman, Mr Gerald Parker to address our 1998 Annual General Meeting. We continued to provide information to our members as it was available, however we became increasingly frustrated by the lack of action and the continued failure to meet promised time lines for the release of information.
>
> We have continued to seek a resolution to the situation since then by contact with the various trustees and correspondence to APRA and ASIC. It appeared that as the association was not a member of the fund we would not be assisted in our inquiries. Contact and correspondence to APRA by this association was not answered.[20]

1.18 In evidence, Mr Heaton from Voyager Resort Ltd also expressed frustration at the lack of communication to members from the second trustee which had assumed responsibility for the fund:

> I asked a number of questions. My main one was: where are we? I also asked: what is happening with the realisation of the assets? Can you tell me what the trading figures are for O'Hara's Resort in Tasmania? I got the same old answer that that was commercially privileged information. That is the same answer that the EPAS trustees were feeding me from the time we had a problem with working out why the fund was not performing … Saying it is commercially privileged information to a member of a fund in which you have a vested interest is not good enough.[21]

1.19 The Committee understands that one outcome of the EPAS case was APRA's reconsideration of its procedures for handling complaints by fund members about trustees, and in particular ensuring that such complaints were dealt with by APRA rather than being referred back to the very people about whom fund members were complaining.

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19 Committee Hansard, p. 531.

20 Submission No. 67, p.2.

21 Committee Hansard, p. 522.

1.20 In relation to property valuations, Mr Heaton suggested that better control measures were required:

> There is far too much autonomy given to trustees as it is, let alone allowing them to seek out valuations and then lend members' money out on those properties.[22]

1.21 The Committee notes that issues relating to inadequate property valuations form part of the current court proceedings against the former trustees. The Committee discusses property valuations further in Chapter 5 of this report in relation to solicitors' mortgage schemes. The competence of auditors is also clearly an issue, given that the fund's auditors in 1995 and 1996 are currently subject to court action by ASIC.

1.22 Other issues concern members' awareness of their choice of appropriate superannuation funds and the remedies available to them should they be dissatisfied with their fund's performance. Mr Heaton noted that EPAS was the only superannuation fund that his organisation 'ever had any contact with', although he could not say how the first contact had been made.[23] As noted above, HMAA Queensland advised the Committee that EPAS was 'one of the funds' listed as an option in the industrial awards and agreements commonly used by its members. However, the Committee did not receive any evidence to suggest that other fund options were widely promoted amongst employees in the hospitality industry.

1.23 A related matter is the extent to which fund members were willing or able to pursue the matter when the fund's financial problems came to light. Mr Heaton told the Committee that, while a group of EPAS fund members had formed and 'hundreds' of members now contacted him to get information and updates on EPAS, initially most members did not seem to care about taking action:

> … in the early days when this first happened and we got that news that we were 43 per cent in [the] negative, the main reaction was, 'Well, we've lost our money,' and I do not accept that … I think you have got to be tenacious about it.[24]

Possible solutions

1.24 While it is difficult for the Committee to comment in detail on matters which are currently before the courts, possible solutions to some of the problems raised in evidence can be identified.

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22 Committee Hansard, pp. 529-530. Mr Heaton suggested that a public service body should assume this responsibility.

23 Committee Hansard, p. 526.

24 Committee Hansard, p. 531.

1.25 First, there are strong suggestions that APRA needs to be more active in response to complaints from fund members, and to improve its oversight of trustees' actions, particularly in relation to guidelines on fund investments such as diversification of assets. Mr Heaton suggested a statutory requirement:

> … that, if the superannuation fund is purchasing an asset in excess of five per cent of the total portfolio, the matter has to be looked at by some party who is definitely at arm's length from the people negotiating the deal ...

1.26 Mr Heaton also suggested in evidence:

> I believe more stringent ratios of liquidity also need to be instigated in funds and controlled by either APRA or somebody to ensure that liquidity levels never go lower than a percentage – possibly 30 per cent.[25]

1.27 Second, it would seem valuable if funds provided more information to their members, in particular by disclosing more details about investment performance and fees. Access to more information is valuable in empowering members to take appropriate action where the fund's financial performance is inadequate. Efforts to ensure the information flow improves are particularly important in an industry with a workforce characterised by many young casual workers.

Conclusion

1.28 The Committee is concerned to learn of the circumstances surrounding the losses incurred by members of the EPAS fund. The losses appear to have been the result of poor performance by some trustees, some property valuers and some auditors. This case points to the need for APRA to improve its performance in the oversight of trustees, in particular by ensuring that more appropriate investment strategies and loan arrangements are entered into.

1.29 The EPAS case also highlights the importance of trustees improving the quality and timeliness of information provided to fund members and the need for APRA to deal with complaints about trustees in a more appropriate way. The Committee believes that trustees must ensure there is better and more frequent communication with fund members about the performance of their fund.

1.30 In its First Report on this term of reference, the Committee made a number of recommendations aimed at ensuring that trustees adhere to the standards expected of them in the administration of substantial sums of money invested by members.[26] The Committee notes that APRA is planning to introduce tighter guidelines on fund investment strategies and that this may mitigate the risk of fund failure in the future.

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25 Committee Hansard, p. 529.

26 See especially Chapter 3 of that report.

1.31 The Committee commends ASIC for taking action against the fund's former trustees and auditors, as it is only by such action that people can be held accountable, the losses to fund members potentially be recouped and community confidence in superannuation savings and assets be restored. The Committee will await the outcome of ASIC's proceedings with interest.

1.32 The Committee is concerned, however, that such legal proceedings may take many years to resolve. Such delays do not assist good administration and the cause of justice. In a rapidly changing business world, comprised of many sophisticated players, technological advances are progressing at a more rapid rate than any advances in the legal processes. Exploring ways to bring about more timely legal outcomes is a major challenge for the legal system.

1.33 The Committee notes that the passive approach reportedly adopted by many EPAS fund members when problems first came to light may reflect in part their youth, the transitory nature of much of the hospitality industry and the consequent small amounts presumably accumulated by many individuals. It may also be due to the general lack of awareness by many people of their superannuation entitlements and their options to take remedial action. The Committee considers that there is a need for greater efforts to educate and empower consumers, particularly where efforts by contributing employers to get information may be refused on the grounds that they are not fund members.

1.34 The Committee believes that, while there may be some constraints on the information that can be provided where investigations are continuing, APRA should also increase its efforts to improve the flow of information to members who make inquiries or complaints. Fund members who in some cases have invested substantial savings for their retirement should be adequately briefed about ongoing developments. It is, after all, their money, and in this case study it has been reported that members have lost over half their investment.

CHAPTER 2

HAIRDRESSERS ASSOCIATION SUPERANNUATION FUND

Background

2.1 The Hairdressers Association Superannuation Fund is an industry superannuation fund for people in the hairdressing industry in Queensland. In 1994 it was recognised in the relevant Queensland awards as an appropriate fund. As at June 2000, the fund had about 4,500 members.

2.2 The fund suffered severe financial difficulties in the early to mid 1990s. Mrs Yvonne Bell, a consultant appointed to the fund from 1 January 1998 to assist its financial position, gave the Committee details of the fund's chequered history, as shown in the following table.[1] In particular, a massive negative return to members arose in 1994/95.

Table 2.1: Hairdressers Association Superannuation Fund 1992/93 – 1999/2000

Year	Returns to members	Funds under management ($m)
1992/93	10.0%	2.65
1993/94	–0.8%	3.11
1994/95	–38.4%	2.88
1995/96	5.1%	4.32
1996/97	8.4%	6.16
1997/98	8.5%	7.78
1998/99	7.6%	9.28
1999/2000	10.5% (est.)	11.5 (est.)

2.3 Mrs Bell said in evidence to the Committee that the investment problems brought about in 1993-1994 were due to two large investments by the original trustees: one in November 1993 of $300,000 in a private company venture and $1 million in June 1994 in another private company.

2.4 Mrs Bell told the Committee that both companies had related parties and that the apparent dominant trustee was also a shareholder in one of the companies. The

1 Committee Hansard, pp. 479-480.

debenture was to pay 17.5 per cent interest but the loan defaulted in September 1994. At that time the fund had assets of $3.1 million, meaning that 41.95 per cent of its assets were invested in related private companies.

2.5 The Committee understands that APRA's predecessor, the ISC, investigated the fund and requested the appointment of a manager. This was carried out in 1994 and ultimately the ISC required replacement of the trustee. A new company, Hairdressers Association Superannuation Pty Ltd, was set up to assume that role with four directors: two employer representatives and two employee representatives. Following the ISC's request, the new trustee froze withdrawals from the fund from September 1994 to February 1995 pending valuation of the fund assets. During that time, asset write-offs and write-downs were undertaken to align members' stated balances with the market value of the fund. In 1994/95 the fund had a negative return of 38.4 per cent, as both companies were liquidated with no likelihood of recovering the funds. The write-offs had since given rise to capital gains tax losses.

2.6 Mrs Bell also told the Committee that the fund had also had a direct property investment in six units it had bought in 1991 for $1.04 million. One of the units was apparently occupied by one of the then trustees. Rents were collected irregularly and no leases were in place. The units were finally sold in late 1999 for $800,000, thus occasioning another substantial loss.[2] The fund also lost money in 1998 after being sued by the fund's previous insurer for several years' unpaid premiums. The original trustee had apparently formed the view that the insurance policy had lapsed and that therefore no debt was owing.

2.7 Mrs Bell told the Committee that the new trustee had considered suing the former trustees for breach of duty in respect of the large losses from the investment decisions. However, legal advice was accepted that an action would not succeed because the former trustees had divested themselves of assets. In addition, the trustee responsibilities under the SIS Act did not apply, since all of the relevant transactions occurred before that Act commenced and the previous prudential regime did not allow the same action to be taken against the trustees.

2.8 Mrs Bell listed the shortcomings identified prior to 1994/95, and the changes that had been made since that time:

2 Committee Hansard, p. 481.

Table 2.2: Hairdressers Association Superannuation Fund: identified shortcomings and subsequent changes

Identified shortcoming prior to 1994/95	Changes
No formal investment strategy.	The fund has a formal investment strategy which is reviewed regularly.
Trustees did not use professional advisers.	The trustee has appointed a range of advisers with expertise in superannuation/ investment and advice is taken regularly.
Limited restrictions on party dealings under legislation prior to the SIS Act.	The SIS Act imposes significant regulation on related party dealings.
Significant related party dealings and lack of disclosure of these in annual reports.	There are no related party investment/ transactions.
Low member balances (average less than $500).	Average member balance now over $2000.

2.9 When asked why the decision had been made to persevere with the fund rather than to amalgamate with a larger fund, Mrs Bell referred to the desire to keep an industry-specific fund:

> … the four new directors that came into the company were very keen to keep this fund alive as a fund for the industry … these people had a lot of pride within their industry. They wanted to go in there, fix it up, save it and show the industry that it could run its own fund. Therefore it became really quite a goal and a dream to get this thing back on its feet for the Queensland hairdressers … (T)hose directors did a lot of work within the industry to convince the employers – and some of the employers were larger group employers – not to take their staff out of the fund and to trust them … Of course the biggest disappointment to all within the industry was that no action was taken against the previous trustees.[3]

2.10 In evidence to the Committee on 25 June 2001, a representative of APRA stated:

> The problems which you were told about in Brisbane really happened back in 1991, 1992 and 1993 under previous legislation … Once a new administrator was appointed and some new trustees were put in place, in about 1994-95, the advice they had was they would be most unlikely to be successful in actions against the previous trustees because the previous

3 Committee Hansard, pp. 486-487.

> legislation did not really provide the props to take that action. The fund has been visited a couple of times by our officers in the ensuing years and has been commented upon quite favourably.[4]

2.11 Accordingly no further regulatory action is anticipated in the foreseeable future.

Issues

2.12 This case study is another demonstration of problems that can arise from poor investment decisions by trustees: the lack of a proper investment strategy, the lack of diversification of investments, with over 40 per cent at one stage in two related companies that were eventually liquidated; and dealings that were not always at arm's length.

2.13 It should be noted that the problems occurred prior to APRA's establishment in 1998, that new trustees were appointed after the intervention of the former ISC and those trustees appear to have turned around the fund's financial performance. Nevertheless, the case study underlines the need for effective supervision of trustees, particularly in relation to their investment strategy.

2.14 As in the case of the hospitality industry, the fact that the former trustees were able for some years to be less than rigorous in executing their fiduciary duties may point to a need to increase the information given to fund members. The hairdressing industry has many young workers whose patterns of employment may be short-term, as noted in evidence by Mr Jeffrey Osborne, one of the directors of the current trustee company:

> We are a very fractured industry. We have something [like] 4,500 salons in Queensland in which employers employ probably four people … they do not have any binding commitment to any one person or persons.[5]

2.15 He went on to describe the nature of the fund's membership:

> Our industry is a very transient industry. The lifespan in our industry is probably from the age of 15 to 30. The majority are women, and at 30 they are usually married with babies. They do not come back into the industry, and if they do, they come back on a part-time basis. Our concern has been that 15-year-old to 30-year-old group. That is where we are picking [new members] up now.[6]

2.16 It has also been reported that few of the young members made voluntary contributions and that almost all of the money flowing into the fund came from employer contributions, pointing to a lack of members' interest in their

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4 Committee Hansard, p.1290.

5 Committee Hansard, p. 486.

6 Committee Hansard, p. 487.

superannuation returns.[7] Mrs Bell also noted that many hairdressing salons are owner-operated and such owners are not eligible for membership of the fund.[8] She commented that the fund now had fewer members than when it was put into administration, at which time most of the accounts were found to be inactive and some to be negative.

Conclusion

2.17 The Committee believes that this case study is another clear demonstration of the need for effective prudential supervision of the smaller superannuation funds, as identified in its First Report. As recommended in that report, APRA must improve its oversight of trustees. In particular, APRA must act to ensure that funds have an effective and adequately diversified investment strategy, and that members are better informed about the details of their fund's financial performance, especially where problems have arisen and inquiries have been made. APRA must also ensure that transactions are at arm's length and that good corporate governance procedures are in place.

2.18 The Committee notes that in this case legal action against the former trustees was considered to have little chance of success. Consequently, members of the Hairdressers Association Superannuation Fund have suffered substantial losses through the fund's large negative returns some years ago, even though the subsequent trustees appear to have improved the fund's performance to a remarkable degree. Whether and in what circumstances fund members should be able to receive compensation is an ongoing challenge for government and the industry.

2.19 The Committee did not receive any evidence in this case about the part played by the fund's auditors, in terms of identifying and drawing attention to the fund's potential financial problems. However, the Committee considers that auditors have a crucial role to play in helping to ensure that early warning signals are heeded. Accordingly the Committee has since held a round table with peak professional bodies and the regulators, to explore such issues as whether auditors should be risk assessors. The Committee will present a separate report on this issue in the near future.

2.20 The Committee notes that this case study also highlights issues pertaining to the long term viability of small industry-specific funds.

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7 M Laurence "Sad tale of neglect and poor practice", *Business Review Weekly*, 5 July 1999, p. 112.

8 Committee Hansard, p. 487.

CHAPTER 3

LAW EMPLOYEES SUPERANNUATION FUND

Background

3.1 The Law Employees Superannuation Fund (LESF) is a superannuation fund originally sponsored by the Queensland Law Society for employees in the legal services industry. The trustee of the fund is QLS Superannuation Pty Ltd, whose four directors are two employer directors nominated by the Queensland Law Society on behalf of all contributing employers and two member directors nominated and elected by fund members. As at 30 June 2000, the fund had 5,700 members.

3.2 The fund was originally administered by National Mutual and then Suncorp, before an administration company, LESF Services Pty Ltd, was formed in 1997 to assume that responsibility. The company was wholly owned and controlled by the fund's trustee. One of the then directors of the fund's trustee company, Mr Gerald Parker, was also secretary for the fund through his consulting company Just Consulting Pty Ltd, of which he was the sole director and shareholder.[1] He provided secretary and management services for the fund from 1 July 1997. The Committee was told that there was no tender for this appointment.[2] Mr Parker resigned as director of the fund's trustee company in December 1998, when the current director Mr Peter Short was appointed. Towards the end of 1999 KPMG and Allen Allen and Hemsley were engaged to investigate the terms of the administration, and subsequently AAS, then an AMP subsidiary, took over administration of the fund from LESF Services Pty Ltd as of 1 May 2000.

3.3 Various concerns about the fund's performance were raised with the Committee. The key concerns raised in evidence by one of the fund members, Mrs Carmel Reading, were:

- the delay before benefit statements and the fund's annual report were sent to members (six months and nine months respectively);
- the fund's poor financial performance in 1998/99; and
- the lack of detail in the trustee's report to members about the fund's poor performance, including the trustee's decision not to reveal information about a defaulting loan on the basis that it might prejudice the borrower.[3]

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1 LESF *Annual Report 1999*, pp. 10-11.

2 Committee Hansard, p. 516.

3 Committee Hansard, p. 491.

3.4 Mrs Reading also complained about the trustee's lack of response to queries from her and other members.[4]

3.5 The Committee was informed that the defaulting loan related to a child care centre at the Gold Coast.[5] The loan of $2.5 million was approved by the trustee in mid 1997, the property having been valued at $3.475 million.[6] The Committee was told that Mr Parker was also financial advisor to the borrower, although the minutes were said to show he had declared his interest to the other directors and had not voted on the loan proposal.[7] The Committee noted that in 1998/99 the fund's Direct Mortgage Loan investment decreased from $3.4 million to $1.9 million.[8] The following year the loan was in receivership and had been further devalued to $1.6 million.[9] The Committee notes that substantial amounts were allowed in the fund's provision for bad or doubtful debts ($521,000 in 1998/99 and $300,000 the following year). LESF's annual report for 1999/2000 noted that the trustee intended 'to eventually sell the property securing the mortgage loan to optimise the return to members' and that the investment was being monitored each month.

3.6 The direct mortgage loan formed part of two of the fund's investment options: its income investment option and its composite investment option. Investment returns for the three years 1997/98 – 1999/2000 showed a large decrease in those two options. In addition, there was a substantial drop in 1998/99 in the equities investment option, as set out in the following table:

Table 3.1: LESF investment returns 1997/98 – 1999/2000[10]

Year	Income investment options	Composite investment option	Equities investment options
1997/98	8.62%	15.70%	22.78%
1998/99	0.70%	2.22%	3.73%
1999/2000	1.00%	9.5%	16.0%

4 Committee Hansard, p. 493.

5 Committee Hansard, p. 512.

6 Submission No. 89, p. 1.

7 Committee Hansard, pp. 507-508.

8 LESF *Annual Report 1999*, p. 30.

9 LESF *Annual Report 2000,* p. 21.

10 LESF *Annual Report 2000*, p. 21.

3.7 The Committee was informed that the loan for the child care centre was one of several direct mortgage loans made by the fund in the mid 1990s. In 1998/99, direct loan investments represented 9.5 per cent of the fund's total assets.[11] Mr Peter Short, one of the current directors of the trustee company, told the Committee that the fund had made four private mortgage loans and that the other three loans had been repaid.[12] However, the Committee notes media reports that QLS Superannuation Pty Ltd had taken legal action to obtain judgement in respect of another loan which had defaulted, a loan of $1 million to Club Capricornia Lifestyle Village to buy Clairview Island south of Mackay.[13]

3.8 Mr Short gave evidence to the Committee that he opposed investment by the fund in private mortgages and that on his appointment he had made his position clear to the Board of Directors:

> I told the Board that … even with the very best of systems and checks in place such investments were not in my view appropriate … because if the Fund was only making 5 or 6 of these loans, then if one of them folded even with the best safeguards it would have a much bigger impact on the Fund that for example if the Fund had hundreds or thousands of these loans … [14]

3.9 Mr Short told the Committee that he had advised the Board he would vigorously oppose such a loan in the future, but that no such situation had since arisen and he did not anticipate it would recur.

3.10 Mr Short also informed the Committee that in 1998 the trustee had selected three financial advisers, BT, Zurich and Macquarie, to manage the fund's low, medium and high risk investments respectively.[15]

3.11 The Committee understands that APRA reviewed the fund in early 1999. The two directors of the trustee company who gave evidence to the Committee, Mr Short and Mr Rinaudo, stated that as a result of its review, APRA had given them a list of matters it considered would be 'useful', and that the board had since worked its way through that list.[16] APRA advised the Committee in June 2001 that it was taking no further action in relation to LESF, although ASIC was reviewing some aspects of its past activities.[17]

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11 LESF *Annual Report 1999*, p. 23.

12 Committee Hansard, p. 507.

13 *The Courier Mail*, 20 March 1999, p. 9. According to the report, Mr Parker confirmed that $1.148 million had been repaid as full settlement of the debt on 13 January 1998. However, a report in *The Courier Mail*, 26 June 1999 pp. 1, 4, stated that subsequent investors lost $1.5 million in the same scheme.

14 Committee Hansard, p. 498.

15 Committee Hansard, p. 498.

16 Committee Hansard, p. 519.

17 Committee Hansard, p. 1288.

Issues

3.12 Several issues of concern arose in this case study. The first related to the fund's poor investment performance and, in particular, to the trustee's decisions in the mid 1990s to invest a substantial proportion of the fund's assets in large direct mortgage loans. The fund is still struggling to overcome the results of those decisions. Whether the transactions were at proper 'arm's length', what inquiries were made about the borrowers' ability to repay, whether the trustee sought and obtained independent and credible valuations in all cases and whether a properly formulated investment strategy was in place are all issues that warrant careful consideration by a prudential regulator.

3.13 A second issue concerns the fund's substantial administration fees, in particular the money paid to one of the then directors of the trustee company for managerial services provided to the fund through his private company. It appears that there was no competitive tendering for this appointment, although one of the current directors commented in evidence to the Committee that he believed the company 'did a much better job than the previous administrators had done' and that the administration fee 'was pegged at what the previous administrator was paid'.[18] Nevertheless there appears to have been inadequate disclosure to members of the details of those substantial payments. According to Mr Short, the fund's current administrators AAS:

> … say it is difficult to ascertain exactly how the fees paid to Mr Parker to administer the fund were split up. The financial accounts to June 1999 outline an amount of $502,510 paid to LESF Services Pty Ltd. Of this amount I am unsure how much (if not all) was paid to Gerald Parker himself and how much might be overheads. Further there was a total payment for the same period of $127,331 for management and secretarial services paid to Just Consulting Pty Ltd in which Mr Parker was (is) a consultant.[19]

3.14 Mr Short noted also that in the previous year's annual report, an amount of over $469,000 was listed as 'other general administration expenses', and that AAS was again unsure how much of that amount may have been paid to Mr Parker.

3.15 Another issue is the extent to which members were provided with comprehensive and timely information about the operation of their fund. The Committee is concerned about the complaints from members that annual reports and members' returns took many months to arrive, and that their queries about the fund's poor performance were not answered to their satisfaction. One member, Mrs Reading, suggested:

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18 Committee Hansard, pp. 516-517.

19 Submission No. 89, p. 2.

> … there should be an annual meeting of members called where trustees can be called to account, answer questions et cetera, and also inform members of the investment strategies.[20]

3.16 The current employer-nominated directors gave evidence to the Committee that they had focussed on making the fund's administration more transparent, as well as maximising its security and return to members.[21]

3.17 A further issue concerns the extent to which employee representation on the board of directors of the trustee company provides a real avenue for input by members, for example, into the fund's investment strategy. The requirement for equal representation of employee-elected and employer-appointed directors was based on the premise that employee representation would provide improved accountability to employees. Whether that has been achieved in this case is open to question. The same two employee representatives have been on the board of directors since 1993. Mrs Reading told the Committee she was not aware of the fund's investment strategy or of any suggestion that members might participate in that strategy.[22]

3.18 Another issue the Committee was interested to explore was the extent to which employees in the legal services industry had a real choice of superannuation fund. The previous two case studies concerning employees in the hairdressing and hospitality industries demonstrate the possibility that one industry fund that is widely advertised may tend to be regarded as the sole option for prospective members. However, LESF's trustee argued that there was no award requirement for legal employees to pay into any particular fund and that members had a wide choice of funds:

> There are no large blocks of employees from particular employers or firms in LESF and the membership appears wide based. Therefore employees and employers in the industry are free and appear to exercise that freedom to choose their choice of fund. Some employers may elect to provide a choice to their employees but some may choose to provide only one option. Some of the large firms may have an EBA [enterprise bargaining agreement] in place that specifies the superannuation fund choices for staff.
>
> … An attraction of LESF is that it was established for the legal services market and the Board is made up of employer and member representatives from the industry.[23]

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20 Committee Hansard, p. 495.

21 Committee Hansard, p. 518.

22 Committee Hansard, p. 495.

23 Submission No. 89, p. 2.

Conclusion

3.19 The Committee considers that this case study, and in particular LESF's poor financial performance after the trustee's investment in several direct mortgage loans (two of which appear to have ended up in great difficulty), points to the need for more effective supervision by APRA of superannuation funds' investment strategies. This need arises particularly in relation to the smaller to medium sized funds.

3.20 While the Committee cannot comment in detail on the LESF's past financial arrangements, partly because of the incomplete information the Committee received and partly because certain issues are still being examined by ASIC, the Committee is concerned about the lack of detail provided to members about the substantial administration fees. Much of those amounts appear to have been paid to one of the then directors of the trustee company who was providing administrative services. The Committee is concerned that trustees must not only comply with their obligations to conduct financial transactions at 'arm's length' and to act with due diligence, but be seen to be so acting.

3.21 More generally, fund members' concerns about the timeliness and adequacy of information provided to them, either by way of annual reporting or in response to specific requests, need to be addressed.

3.22 Finally, the Committee believes that this case study has pointed to several ongoing issues which may need further consideration in the development of future superannuation policy:

- whether employee representation in a trustee body is effective in providing increased accountability to members of industry-based superannuation funds;
- whether real choice is provided to potential fund members where there is one widely-known industry-specific fund; and
- whether small industry-specific funds with fewer resources should be preferred to larger funds, which have greater resources and hence an increased capacity to pay for expert assistance, such as financial advice, without imposing an undue burden on their members.

Summary of Queensland case studies

3.23 The three case studies in Queensland involve over 36,000 members who have suffered significant losses in terms of negative or very poor returns from their funds over several years. In the case of EPAS, members suffered a negative 43 per cent return in 1998, while members of the Hairdressers Association Superannuation Fund suffered a negative 38 per cent return in 1993. Overall, the Committee considers that the three case studies in Queensland have demonstrated that:

- fees and charges accounted for a disproportionate amount of the administration expenses incurred by two of the three funds, EPAS and LESF, with little

attempt to justify and account for the expenditure (the Committee did not receive any information about the administration expenses for the Hairdressers Association Superannuation Fund);

- there did not appear to be bona fide employee representation (for example, there were no union-elected trustees) in the funds' administration, either because equal representation was not required under the SIS Act[24] or because employee representatives may not have been effective;[25] and
- the State industrial environment was not conducive to the efficient and effective conduct of the funds, although the Committee notes that the Queensland Government undertook an extensive re-working of the entire industrial system in 1998-1999.

3.24 The Committee considers that these cases highlight the failure of the trustees to discharge their fiduciary duties to the fund members and the failure of the regulatory framework.

3.25 In the Committee's view, the trustees, either through inexperience or lack of knowledge or wilful contravention of their responsibilities, failed in their duty to prudently administer the funds for the long-term benefit of the members. This included allowing investments which appear not to have been at arm's length and which led to poor returns. Some trustees also charged extremely high administrative fees. In some cases it appears they may have exercised inappropriate influence on the operation of the fund and its investment strategy. In particular, the Committee notes that one individual appeared to have significant influence over two of the funds in question, EPAS and the LESF, and that this may have exacerbated the problems common to both funds.

3.26 The Committee also considers that the cases demonstrate serious shortcomings in the oversight of funds. In particular, the Committee considers that:

- the State industrial environment which existed at the time was inadequate and insufficiently vigilant in oversighting the funds and the State Industrial Commission, in naming the funds within the awards did not appear to have developed a strategy to ensure that the funds were operated with integrity;
- the trustees of the funds carried out inappropriate investments;

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24 As noted in Chapter 1, the Committee understands that EPAS is a public offer fund and thus is not required under Part 9 of the SIS Act to have equal representation of employees and employers on the trustee body: instead, the trustee must be independent and be approved by the regulator.

25 As noted above in para 3.17, LESF as a standard employer-sponsored fund complied with the equal representation rules, but the Committee had some concerns about the effectiveness of this arrangement given the fund's poor performance. The Committee did not have any further information about the background of the employee representatives. The Committee was also not advised about the status of the Hairdressers Association Superannuation Fund prior to the SIS Act and any employee representation in the fund's first trustees.

- the regulators, APRA and its predecessor, the ISC, were insufficiently vigilant in carrying out their supervisory responsibilities;
- the auditors of the funds appeared to be remiss in the performance of their duties by providing reports which did not obviously highlight the shortcomings of the funds; and
- the employer organisations also appeared to abrogate their responsibilities to their employees by not providing a sufficiently rigorous analysis of the funds which they were endorsing.

3.27 Moreover, the Committee considers that there are probably other funds of a similar nature in Queensland.

3.28 Accordingly, the Committee recommends that, as a matter of urgency in conjunction with APRA, the Queensland State Government, through the Department of Industrial Relations and in consultation with the Queensland Industrial Relations Commission and the Queensland Industrial Court, conduct a review of all superannuation provisions in State awards and agreements with a view to ensuring their consistency with national standards. This review should include:

- identifying and codifying the employer-employee trustee arrangements to ensure that they are genuinely representative of the respective parties;
- identifying fund investment strategies;
- identifying any commissions by funds to any organisations or individuals; and
- identifying existing levels of fees, charges and commissions to determine if there is a significant departure from the industry norm.

3.29 The Committee also recommends that all other State Governments, in conjunction with APRA, conduct similar reviews of superannuation provisions in their State awards and agreements with a view to ensuring their consistency with national standards.

Recommendations

3.30 The Committee recommends that, in conjunction with APRA, the Queensland State Government, through the Department of Industrial Relations and in consultation with the Queensland Industrial Relations Commission and the Queensland Industrial Court, conduct a review of all superannuation provisions in State awards and agreements with a view to ensuring their consistency with national standards.

3.31 The Committee recommends that, in conjunction with APRA, all other State Governments conduct a similar review of all superannuation provisions in their own State awards and agreements with a view to ensuring their consistency with national standards.

3.32 The Committee emphasises that these reviews should particularly address the tests that are applied to superannuation arrangements in industrial awards and agreements, in order to ensure that trustee arrangements are bona fide and that the level of fees and charges conform to appropriate levels.

CHAPTER 4

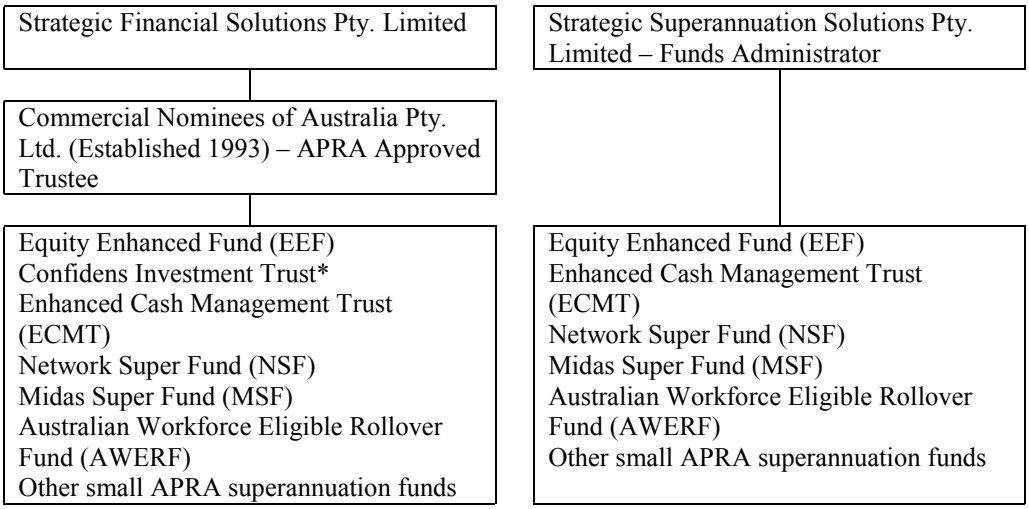
COMMERCIAL NOMINEES OF AUSTRALIA PTY. LIMITED

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.

CHAPTER 5

SOLICITORS' MORTGAGE SCHEMES IN TASMANIA

Background

What are solicitors' mortgage schemes?

5.1 Mortgage schemes have been operated by solicitors across Australia for over one hundred years. The funds in the schemes are usually administered by a solicitor who arranges loans in which real estate is offered as security. In some cases, the solicitor acts on behalf of a number of clients who each contribute funds to the mortgage. The services provided have been especially useful in rural areas where access to banks and other sources of funds was limited.

5.2 In Tasmania, the schemes were attractive to investors because investing with a legal firm was perceived to be a safe and prudent decision. Often the investors had close family ties with the practices concerned, either through shared community interests or because of family associations dating back two or three generations.

5.3 While there were some common features of the schemes, there were some differences in predicted returns as well as a fees and charges. **Appendix 3** gives some details of the fees charged by some firms of solicitors in Tasmania, and the conditions which applied to the investments.

Solicitors' mortgage schemes in Tasmania

5.4 In May 2001, 17 Tasmanian legal firms out of 150 were operating mortgage schemes. Of these, at least four firms have encountered difficulties with poor results for their investors.[1]

5.5 Estimates of the number of investors negatively affected vary, although the evidence received by the Committee, consistently suggested that around 300 investors and up to $20 million was involved.[2] In some cases retirement income streams have ceased, and repayment of principal or interest has not been forthcoming when requested.

5.6 The first indication that there were problems with a Tasmanian solicitor's mortgage fund occurred in late 1996. Following complaints, a Law Society trust account inspection of the firm of Macquarie Law managed by Mr Andrew Hurburgh, was undertaken following complaints to the Law Society about the management of the

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1 The firms were Macquarie Law, Lewis Driscoll and Bull, McCulloch and McCulloch and Piggott Wood and Baker.

2 Submission No. 154, p. 1.

fund. Mr Hurburgh ceased to practise, relinquished his practising certificate, and a manager was appointed to the firm. A default order[3] was obtained from the Supreme Court, and the investors in the fund ultimately recovered their capital – but no interest from the sale of the mortgaged properties and from payments from the Solicitors' Guarantee Fund.[4] The Court declined to order the payment of interest because of the low level of funds in the Solicitors' Guarantee Fund which would have been insufficient to meet the amount claimed.

5.7 Between 1996 and 1998, three more mortgage schemes run by solicitors' firms were found to be in difficulties: Lewis Driscoll and Bull, McCulloch and McCulloch and Piggott Wood and Baker. Other firms experienced difficulties during this time, but these were not on the same scale as the three mentioned above.

5.8 The mortgage schemes had been heavily promoted and (at least initially) appeared to offer advantageous rates of return. However, in April 2001 it became clear that there were serious community concerns in Tasmania about the performance of mortgage funds administered by the three firms mentioned above.

5.9 The result has been that investors have lost considerable sums of money, which may or may not be recoverable. The investors, many of whom were elderly, had placed their retirement benefit in the mortgage schemes in the expectation of generating a steady retirement income.

5.10 Garrisons Financial & Retirement Specialists played a key role in referring clients to the schemes - particularly that operated by Piggott Wood and Baker. Of the estimated 300 investors affected by the demise of the schemes, 70 were Garrisons' clients.

5.11 In a submission to the Committee, Mr Arnold Sierink on behalf of a group of those affected by the schemes, outlined some of the difficulties in accurately estimating the extent of the losses. He pointed out that some victims were reluctant to come forward, due to acute embarrassment, shame and guilt. In some cases spouses were unaware that their partners had lost funds, and family members were unaware that other family members had done so. There was also a sense of having been betrayed by a person whom the investor trusted – often a long-standing family solicitor. Mr Sierink continued by advising the Committee that:

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3 A default order is an order made by the Supreme Court on an application by the Law Society, or a person, a firm or a legal practitioner who claims to have suffered loss as a result of a fiduciary (financial) default by a solicitor.

4 The Solicitors' Guarantee Fund is established and operated by the Solicitors' Trust. The funds are raised through investment of funds from solicitors' trust accounts. The Solicitors' Guarantee Fund provides some operating funds for the Law Society, the Law Foundation and the Legal Ombudsman.

> [The] isolation and the resulting inability to access support services compounds the health and social problems of people who have been suddenly left bereft by the improper retention of trust monies. [5]
>
> In her submission to the inquiry, Ms Joycelyn Walsh, a retired dressmaker and retailer, now a single pensioner, told of her experiences with her 'nest egg' of $65,000, and concluded:
>
> I now have to think seriously about downgrading my home, because without my capital and interest I am finding it very difficult to manage the basic household expenses.[6]

5.12 While the public focus was largely on the losses experienced by investors, borrowers were also victims of the problems which occurred. The Tasmanian economy, buoyant at the beginning of the 1990s began to decline in the middle of the decade. The result was a decline in the property and building market, and a decline in the ability of borrowers to repay the funds advanced to them. In particular, when investors sought a refund of their money, in many cases, the borrower had no alternative but to sell the security (often in a depressed market) which may or may not have realised sufficient funds to discharge the mortgage. This had the potential to leave both the borrower and the lender with less than before the mortgage was negotiated.

5.13 A chronology of events concerning solicitors' mortgage schemes in Tasmania for the period 1992 to 2001 appears at **Appendix 4.**

Issues

5.14 During the course of the inquiry a number of issues was identified which appeared to contribute to the problems experienced with solicitors' mortgage schemes. These included:

- the effectiveness of the regulatory framework;
- the role and conduct of the Law Society of Tasmania, including its oversight of firms of solicitors, trust account inspection reports and procedures, and its oversight of, and response to client complaints;
- the appropriateness of valuation practices;
- the adequacy of the practices of financial advisers;
- access to consumer support mechanisms; and
- the impact of external economic factors on Tasmanian investments.

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5 Submission No. 154, p.3.

6 Submission No. 132, p.2.

The regulatory framework

5.15 The adequacy of the regulatory framework was one of the most important issues raised during the inquiry. Solicitors' mortgage schemes in Tasmania are currently regulated by the Law Society of Tasmania. The Society operates under an exemption from the supervisory and regulatory requirements imposed under the Commonwealth's Corporations Law, which is administered by the Australian Securities and Investments Commission (ASIC). This exemption was granted initially in 1992 after an inquiry by the former Australian Securities Commission (ASC), and has been renewed periodically since. [7]

5.16 In granting the exemption, ASIC accepted the Law Society's assurances that the Society's regulation, control and supervision of solicitors' accounts would provide adequate protection and accountability to mortgagors and mortgagees alike.

5.17 In its submission to the regulator, the Law Society stated that the ASC 'may choose' to recommend that the Corporations Law should not apply to the legal profession because 'it is sufficiently controlled under state laws.'[8] The Society contended that:

> … its existing methods for the regulation, control and supervision of the accounts of solicitors which (inter alia) extend to the supervision of monies received for investment on mortgage; to their application; and to the maintenance and preservation of the securities taken, provides a desirably high measure of protection for all clients and investors.[9]

5.18 The submission also sought to assure the ASC that :

- the legal profession's service to mortgagors and mortgagees was of a high standard;
- there was a very low risk of non- compensated loss;
- the provisions for indemnification of clients for loss occasioned by negligence or fraud were a substantial assurance for members of the public, and a measure of security not available to the public in its dealings with other institutions.[10]

5.19 In addition to these assurances the undertaking included access to the Solicitors' Guarantee Fund to compensate investors who had lost funds through the fraudulent activity of lawyers.

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7 Similar arrangements also applied in other States.

8 Submission No. 137, attachment 1, p. 2.

9 Submission No. 137, attachment 1, p. 2.

10 Submission No. 137, attachment 1, p. 2.

5.20 Solicitors' practices are also regulated under Tasmanian State legislation. This includes the *Legal Profession Act 1993,* which defines the parameters of legal practice, and the *Trustee Act 1898,* which imposes prudential obligations on the Trustee to, among other duties, obtain independent valuations on properties offered as security, and ensure the security of investments made.

5.21 In addition the Tasmanian *Valuers Registration Act 1974* provides for the registration and deregistration, as well as professional qualifications of valuers. It contains no provisions for the compensation of clients affected by poor valuation practices.

5.22 In Tasmania properties are registered with the Land Titles Office. Although not integral to this inquiry, the Committee notes that some concerns were expressed about the integrity of the records of the Tasmanian Land Titles Office.

5.23 Within this regulatory framework, witnesses drew attention to a number of deficiencies in the Law Society's performance of its regulatory duties. For example, in his evidence to the Committee, the Hon. Ray Groom, MHA, Shadow Minister for Justice, recounted his discussions with a group of investors who had approached him with their concerns. He said:

> … people feel that the Law Society has failed to properly regulate the schemes … [and to] … act properly to supervise these investments.[11]

5.24 In their submission Mr and Mrs Sierink stated that they:

> … believe that if the criteria under which the Law Society of Tasmania obtained their exemption from the Corporations Law in 1992 had been adhered to, and if the Law Society had properly regulated and audited the Solicitors' First Mortgage Schemes together with proper research undertaken by Garrisons, the problems now being experienced would never have taken place.[12]

5.25 The Law Society's view was that its regulatory regime was approved by ASIC and its predecessor, the ASC, and the Society had discharged its functions within those rules. The President of the Society, Mr Philip Jackson, conceded that the rules may have been inadequate but emphasised that:

> … those rules were approved by the ASC. If they did not perceive they were inadequate, why should the Law Society have been able to perceive they were inadequate?[13]

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11 Committee Hansard, p. 955.

12 Submission No. 131, p. 3.

13 Committee Hansard, p. 975.

5.26 The Society also indicated that its powers of control over the Fund operators were not comprehensive and did not extend beyond what was contained in the Rules of Practice.

5.27 ASIC denied that the ASC approved the rules. In evidence to the Committee, Mr Ian Johnston, ASIC's Executive Director, Financial Services Regulation, said:

> … the statements that were made by the various law societies going back into the early 1990s were of the nature that said they would have… sufficient resources to supervise these schemes. Some of them proffered rules which were not approved by ASIC or the ASC as it was then. It was not the case that the ASC approved the rules that they had but the rules were one of the things that were taken into account. … [R]egulatory frameworks…would have been part of the submission that they made, and we would have approved the body to be the supervisor, … that does not mean we approved the regime they have sitting underneath.[14]

5.28 ASIC indicated to the Committee that it agreed with the proposition that the undertakings given by the Law Society in 1992 in relation to the supervision of mortgage schemes did not appear to have been met.[15] However, ASIC acknowledged that the industry had undergone considerable change since that time. ASIC further advised that as a result of the *Managed Investments Act 1998*,[16] and its own investigation of mortgage schemes, the majority of fund regulation will be supervised by ASIC under a more rigorous regime, from 31 October 2001.

5.29 However, the Committee notes that the small funds with fewer than 20 members will not be covered by the new ASIC regulation. The Committee sought an assurance from the Law Society that it would develop appropriate procedures to deal with these funds in order to ensure that the investors in them are in no less a position than those in funds administered under ASIC's legislation.

5.30 In response to this request the Law Society advised that it had commenced discussions with ASIC and would consider the matter further.

The role and conduct of the Law Society of Tasmania

5.31 Related to the adequacy of the regulatory framework is the Law Society's role in the schemes, and the manner in which the Society conducted itself.

5.32 As part of its statutory duties, the Law Society has the following functions:

- the regulation, promotion and representation of the legal profession;

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14 Committee Hansard, p.1146.

15 Committee Hansard, p.1143

16 All schemes must either be wound up or registered with ASIC by 31 October 2001. The date for compliance may be extended on application to ASIC before the due date of 31 October 2001. Extensions will be considered in limited circumstances with strict conditions.

- the promotion of law reform;
- any other functions which promote the objects of the Society.[17]

5.33 In addition, the Society may do all things necessary or convenient to perform its functions.

5.34 The *Rules of Practice 1994* prescribe the manner in which certain practice tasks are to be undertaken, including the maintenance and administration of trust accounts. The Rules also address the conduct of mortgage funds including prescribing the ratios of capital funds to borrowed funds.[18]

5.35 A number of investors expressed concern about the Society's statutory functions. For example, Mr Groom conveyed the view that had been expressed to him that the Law Society's dual roles of regulating and disciplining solicitors while promoting and protecting their image, involved an inherent conflict of interest.[19]

5.36 In addition to this apparent conflict of interest, a number of other issues about the Law Society were drawn to the Committee's attention including the adequacy of its oversight of firms, trust account inspection reports and procedures and its oversight of consumer complaints.

Law Society oversight of firms

5.37 As part of its role as defined by the Act and the Rules of Practice, the Society must oversight:

- practitioner registration, including ongoing education;
- compliance with ethics;
- supervision of trust accounts; and
- handling complaints about practitioners.

5.38 In evidence to the inquiry the management of some of the schemes was heavily criticised. For example, Mr Peter Kang-Scheit noted poor risk assessment by solicitors' firms as a major factor in the collapse of the mortgage funds.[20]

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17 Section 6(1) (a), (b), (c) and Section 6(2) of the *Legal Profession Act 1993.*

18 Part 5 of the *Rules of Practice 1994* addresses this area. Section 62 defines a first mortgage and then prescribes the lending ratios which apply. The amounts advanced must not exceed two-thirds of the security valuation if the mortgage is not insured. If the mortgage is insured, 90 per cent of the security valuation will be advanced. The insured amount is that part of the advance which is over two-thirds of the security valuation. If there is no security valuation, the amount advanced will be 50 per cent of the government valuation in force at the date of the mortgage.

19 Submission No. 130, p.5.

20 Submission No. 164, p.2.

5.39 Mr Patrick Toomey, a solicitor who has been instructed by a number of clients affected by the collapse of the mortgage schemes, pointed out that McCulloch and McCulloch lent funds without obtaining valuations, lent funds to a business partner (who was also the principal of the firm Lewis Driscoll and Bull) and lent funds on a series of inflated valuations.[21]

5.40 In relation to this point, Mr Peter Joyce, court-appointed manager of the McCulloch and McCulloch fund indicated in his submission to the inquiry, that the low quality of the security properties was reflected in the large number of mortgagee sales which resulted in a capital loss to the investors.[22]

5.41 Mr Toomey also submitted that in the case of Piggott Wood and Baker, injudicious lending practices were undertaken in a number of cases.[23] These included apparently lending on high-risk mortgages on a number of properties, as well as relying on unreliable valuations.

5.42 Piggott Wood and Baker responded by stating that the properties were the subject of independent valuations. However Piggott Wood and Baker also advised that it had accepted that in at least one case there had been a negligently prepared valuation, and that sales of other properties had yet to be finalised.[24]

5.43 In his submission to the inquiry, Mr Peter Worrall, court-appointed manager of Lewis Driscoll and Bull, indicated that the Lewis Driscoll and Bull fund was characterised by poor quality lending with little risk assessment, and no assessment of the capacity of the borrower to service the loan.[25]

5.44 The Law Society's view was that its role was limited to assessment of fund management as evidenced by its trust account inspections, and by its management of complaints in accordance with the Rules of Practice. In evidence to the inquiry, Mr Philip Jackson stated that those rules were prepared for the Society and emphasised that the Society did not prepare them, 'although it formally made them in council'.[26]

5.45 The issue of compensation to investors who have lost funds was also raised in evidence with the Law Society. The Solicitors' Guarantee Fund is a limited source of compensation for those clients of solicitors against whom a default order has been obtained. Where a default order has not been obtained, no compensation is available.

5.46 In canvassing possible additional sources of compensation the Society was asked by the Committee, if in the event of loss and, given the assurances that were

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21 Submission No. 137, p.10.

22 Submission No. 160, p.2.

23 Submission No. 137, p.11.

24 Submission No. 176, p.9.

25 Submission No. 155, p.2.

26 Committee Hansard, p.968.

given to the ASC would the Society be prepared to levy its members. The Society's President responded:

> The question is premature because there is no basis at the moment for supposing that there might even be any need to do that. [27]

5.47 When pressed, the Society also did not concede that a general levy on practising solicitors would be appropriate, as many of the current practitioners would not have been in practice either when the undertaking was given to the ASC nor when the mortgage schemes began to go awry.

Law Society oversight of trust account inspection reports and procedures

5.48 The scrutiny of solicitors' trust accounts became a major issue of concern during the inquiry. In particular, concerns were expressed to the Committee about whether the trust account inspections revealed the true state of the trust accounts, and whether the trust account inspection provisions were sufficient to detect the practices which resulted in the collapse of the funds.

5.49 Section 17 of the *Legal Profession Act 1993* allows the Law Society's governing body (the Law Society Council) to make Rules of Practice for regulating a number of matters. The relevant matters for this inquiry are:

- the professional practice, conduct and discipline of barristers and legal practitioners and foreign lawyers;
- the establishment of accounts at authorised deposit-taking institutions for money of clients;
- the keeping, inspection and audit of records relating to money received, held or paid for on behalf of clients.[28]

5.50 Part 3 of the *Rules of Practice 1994* deals with the maintenance, administration and inspection of trust accounts. It was a popular belief among investors that the solicitors' mortgage funds would be audited. Several submissions expressed concern at what they saw as the Law Society's neglect in this area.[29]

5.51 Mr Leon Morrell, an investor in a solicitors' mortgage scheme advised the Committee that:

> My understanding was that there was a twice-yearly monitoring-audit-of these funds. If there was twice yearly auditing, how come this has all happened?[30]

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27 Committee Hansard, p.966.

28 See Sections 17(1) (a), (d), and (e).

29 Submission Nos. 128,154,195.

30 Committee Hansard, p. 951.

5.52 The Society argued that its role in trust account supervision was limited to inspection only - not to auditing. The President of the Society, Mr Philip Jackson stated that:

> There has never been any auditing process because the rules do not provide for it and the Society has no power to audit. The Society has a power to inspect. The Law Society, I should emphasise, did not prepare those rules, although it formally made them in council, and they were in fact approved by the ASC. They provide for inspections only and those inspections have been carried out from year to year.[31]

5.53 In his submission, Mr Patrick Toomey pointed out that the Council did have the power to provide for auditing rather than inspecting documents under section 17(1) (e) of the *Legal Profession Act 1993*. He continued:

> Any defect in a Scheme which would have been uncovered by an audit and not by the inspection results from the Society's voluntary circumsubscription of its own powers.[32]

5.54 Mr Toomey took the view that a properly conducted audit would have revealed the extent of the breaches of trust occurring within certain schemes including the lack of compliance with prudential requirements, the conflicts of interest and the taking of unauthorised commissions and the lack of independent valuations.

5.55 The Society described Mr Toomey's views as 'arrant nonsense' and continued:

> Whether an examination of books of account is described as an inspection or an audit, such an examination by its very nature can be no more than an examination of a sample of records, not an entirety of records.[33]

5.56 In support of this, the Society cited the case of one of the firms now under management, and indicated that a trust account inspection report concluded that the records were well maintained, and 'particular care and attention [was] given to the mortgage fund.' While the inspector expressed concern about the spread of some loans, he concluded that the Society had no control over this issue, and the solicitor was complying with the Rules of Practice. In the Society's view, this example highlighted the inaccuracy of Mr Toomey's view, rather than the fact that the Rules of Practice themselves were inadequate as a supervisory tool.

5.57 According to the Law Society, its contracting resources also affected the manner in which trust accounts (and therefore the mortgage schemes) were inspected. Mr Timothy Bugg, former President of the Society also indicated that in 1998 the

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31 Committee Hansard, p. 968.

32 Submission No.137, p.7.

33 Submission No. 208, p.3.

Society decided to change the system of inspection from in-house to an outsourced system. When asked why this was, Mr Bugg replied:

> [The in-house inspector's] term with the Society was coming to an end but the society could not, in that period, afford to employ someone else. In fact, during the term of [my] presidency a number of steps were taken to reduce staff because of resource issues brought on by lack of funds from the guarantee fund.[34]

5.58 Further evidence by Mr Bugg indicated that he could not recall informing the ASC of the Society's decision about its inspection arrangements, nor the fact that the Society's resources were so depleted as to require changes in its supervisory regime.[35]

Law Society oversight of client complaints

5.59 Evidence to the inquiry highlighted that one of the major complaints about the Society was the way in which it oversighted and responded to consumer complaints. Complaints ranged from delays in responding, to lack of response within a reasonable period or no response at all.[36]

5.60 The Legal Ombudsman, Ms Judith Paxton, pointed out in her evidence to the inquiry that she had advised the Tasmanian Attorney-General of her concerns about delays by the Society in dealing with complaints and disciplinary matters. She acknowledged the resource issues facing the Law Society, but expressed concern at the need for an overall improvement in the handling of these issues.[37]

5.61 The Law Society acknowledged that until late last year there were some problems with complaint resolution. Mr Philip Jackson, Law Society President, said in evidence:

> We went to a great deal of trouble in the last half of last year to put in place a very comprehensive system to replace the existing system for dealing with complaints.[38]

5.62 In order to free up resources to improve its complaint resolution system, Mr Jackson said that the Society had forgone any income from the Solicitors' Guarantee Fund for 1998 and 1999, substantially reduced staff levels, and reduced

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34 Committee Hansard, p.972.

35 Committee Hansard, p.972.

36 Submission Nos. 129, 158, 164,169,181,190,234.

37 Submission No. 234, pp.3-4.

38 Committee Hansard, p.981.

member services.[39] It was also currently selling its premises to raise funds for its ongoing operations.[40]

5.63 The Society expressed confidence in its revised method for dealing with complaints and indicated that it was now working well.[41]

Valuers and valuations

5.64 The valuations upon which the funds were advanced were also a significant issue for the inquiry.[42] The Committee was advised that in many cases the valuations relied upon bore little relationship to the real value of the property. In evidence to the Committee, Mr Ian Johnston, Executive Director, Financial Regulation, ASIC, said that in a number of jurisdictions mortgage funds were characterised by poor assessment of borrower criteria and poor valuation practice.[43]

5.65 In her submission to the inquiry, Mrs Cherylyn Harris, an investor with a solicitors' mortgage scheme, told of her increasing unease about the authenticity of the valuation of her investment.[44] One property increased in valuation by $70,000 in five months. On contacting the valuer she was told that the borrower wanted to lease or sell the centre to someone to whom he owed money, and the increased sale price would allow him to pay the debt, as well as achieve his sale price.

5.66 In evidence, Mr Patrick Toomey, solicitor pointed out that he was also a registered valuer, and in his view the simplistic nature of the Rules of Practice, and the prescribed lending practices did not accommodate the commercial nature of the projects on which the funds were lent.[45]

5.67 The Law Society indicated that the legal firms were dependent on the valuations they obtained from valuers to determine whether or not they were within their lending margins as prescribed by the rules.[46]

5.68 Under the provisions of the Valuers Registration Act, the Valuers Registration Board in Tasmania registers valuers and has some regulatory function over them. In its submission to the Committee Mr Lou Rae, the Chairman of the Valuers' Registration Board, indicated since the Board's establishment, no valuer has been

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39 Committee Hansard, p 968.

40 Committee Hansard, p 1211.

41 Committee Hansard, p 981.

42 Submission Nos. 133,164.

43 Committee Hansard, p.1142

44 Submission No. 129, p.4.

45 Committee Hansard, p.1001.

46 Committee Hansard, p.986.

fined or suspended, and at best, penalties have included admonitions, or mild rebukes. Further, the Board has no compensatory function for aggrieved consumers. [47]

5.69 Mr Rae also indicated that, while there had been no complaints about valuers in respect of solicitors' mortgage schemes prior to the Committee's public hearing in Hobart on 18 May 2001, the Board had since received two complaints about a valuer involved with the mortgage funds. Mr Rae further indicated that while the Board could not determine these complaints, the parties have been invited to particularise them, so that the Board can inquire into the matter under the Valuers' Registration Act.

5.70 In addition, Mr Rae advised the Committee that the Board is to be abolished because of the limitations on its power to provide compensation to consumers, and to deal adequately with complaints. The proposed new legislation will prescribe a code of ethics and a more adequate complaints mechanism to be administered by the Tasmanian Director of Fair Trading. [48]

5.71 In addition to being registered, most valuers belong to the Australian Property Institute. The Institute is a professional body providing, among other member services, admission, education, regulation, and setting professional practice standards. Mr Paul Wilson, Tasmanian Divisional President of the Institute, indicated in his submission, that there had been only one written complaint from one practitioner about another concerning perceived unethical business practices. The complaint resulted in a fine.[49]

5.72 In evidence to the inquiry witnesses drew attention to the need for valuations to be obtained on behalf of both the mortgagor and the mortgagee to ensure that the interests of both parties were better protected should the property need to be sold. One submission also suggested obtaining regular valuations over the life of the mortgage of commercial property. [50]

Practices of financial advisers

5.73 In evidence to the Committee witnesses drew attention to what they perceived to be poor practice by financial advisers such as Garrisons Financial & Retirement Specialists.[51] This included a failure to research and evaluate the solicitors' mortgage funds prior to recommending them as part of a portfolio.

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47 Submission No. 200, pp. 3 and 4.

48 Submission No. 200, p.5.

49 Submission No. 199, p.4.

50 Submission No. 140, p.5.

51 Garrisons is a 100 per cent owned subsidiary of Challenger International, and licensed dealer in securities.

5.74 Mr Arnold and Mrs Maureen Sierink were among the 70 investors affected by the mortgage schemes through their link with Garrisons. They shared the concern that Garrisons did not undertake sufficient research into the funds before recommending them as part of the portfolio and believed Garrisons were unwilling to assist them in recovering their funds.[52]

5.75 In its submission to the Committee, Garrisons indicated that they believed solicitors' mortgage funds to be a 'proven conservative investment of long standing.' The firm indicated that they had relied upon the Law Society's lending rules, and its audit and supervisory provisions.[53]

5.76 Garrisons advised the Committee that it had suggested solicitors' mortgage schemes to clients as part of an overall portfolio. They placed the funds with various mortgage schemes over a period of time. Details of the total amount invested with each firm by Garrisons in the period 1989-1998 appears at **Appendix 5.** Details of the annual amounts invested over the same period appears at **Appendix 6.**

5.77 The data show that Garrisons placed in excess of $19 million into solicitors' mortgage schemes over a period of nine years, with the bulk of those funds invested between 1994 and 1997. Of the six funds into which Garrisons directed most of their investors' money, two have since been placed in the hands of managers, and one has serious difficulties. Furthermore the injection of money from Garrison's clients significantly increased the pool of investment funds available to these firms, In some cases it quadrupled the amount available in the fund over the four year period.

5.78 The fees charged by the solicitors administering the schemes varied between 0.4 per cent and 1.5 per cent per annum.[54] These were paid to the solicitors by those who invested directly in the schemes. For those who invested through Garrisons, Garrisons also charged their clients a percentage of the investment being made in addition to the fees levied by the solicitors. The effect was that Garrisons' investors paid a direct fee to Garrisons as well as indirect fees to solicitors.

5.79 In evidence to the Committee, Mr Michael Spinks, Executive Director of Garrisons, acknowledged that the firm was only able to indicate the net return to investors, and that it had no detailed knowledge of the fees and charges made by the solicitors in managing their schemes.

5.80 Prospectuses were not required to be provided by the solicitors' mortgage schemes but they were required for other mortgage investment schemes regulated by ASIC. Garrisons advised that they relied on the material issued by the solicitors, copies of which were provided to Garrisons. Garrisons did not necessarily prepare their own material on the schemes.

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52 Submission No. 131, p.2.

53 Submission No. 152, p.1.

54 See Appendix 3.

5.81 ASIC acknowledged in evidence to the Committee that Garrisons should have had some knowledge of the underlying investments in solicitors' mortgage funds, but the level of detail was a 'moot question'. [55]

5.82 The Committee was told that one of the Garrisons advisers had been subject to a six month banning order by ASIC in relation to his involvement in recommending the Piggott Wood and Baker scheme to clients of Garrisons. Mr Phil Creswell, Garrisons' National Audit and Compliance Manager and Company Secretary, explained that the order resulted from a determination by ASIC that their adviser did not know the mortgage scheme product as well as he should have.[56]

5.83 The Committee was pleased to note that in one of the most significant positive outcomes of the inquiry, ASIC negotiated a rescue plan with Garrisons for their investors. Under the plan, Garrisons have undertaken to repay capital upon receipt of a signed deed and to pay interest of 6 per cent per annum to the estimated 70 clients who lost money through their referrals. The interest will be paid on or before 31 December 2002.

Access to consumer support mechanisms

Law Society- consumer assistance

5.84 Another significant issue raised during the inquiry was the lack of consumer assistance. Complaints were made about the length of time the Law Society took to respond to correspondence, and the Society's overall response to consumer problems.[57] Mr Charles Phillips, an investor, described the Society as an 'integral part of the problem rather than a help with any solution'.[58]

5.85 Mr Jackson, President of the Law Society, expressed the view that the Society had gone to a great deal of trouble in the last half of last year to put in place a very comprehensive system to replace the existing system for dealing with complaints. According to Mr Jackson:

> It works exceedingly well at relatively little cost now to the Society, with the enormous cooperation of the profession.[59]

5.86 While the system may be working well for the Society, the information proffered by the witnesses and in the submissions was quite different. After investigation of a complaint, some clients were told by the Society that they should seek further legal advice. The cost of doing this merely added to their problems, and

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55 Committee Hansard, p.1145.

56 Committee Hansard, p.1008.

57 Submissions No. 125,130,158.

58 Submission No.169, p.3.

59 Committee Hansard, p.981.

they noted that legal aid in Tasmania was, and continues to be generally unavailable for civil litigation.

5.87 The Society had a limited view as to the extent to which it was able to provide protection for consumers. The Committee was told by Mr Jackson:

> I do not agree that we have a consumer protection role. We never have had. It may be that that is a desirable thing, provided we had the resources to do it. But our role is confined to ensuring that solicitors deal properly with their trust accounts and money that goes through their trust accounts. That is the beginning and the end of it. [60]

Access to the Legal Ombudsman

5.88 One avenue pursued by some clients was the lodgment of complaints about the handling of their matters by the Law Society with the Legal Ombudsman. The duties of the Legal Ombudsman's position are set out in Part 4 Division 3 of the *Legal Profession Act 1993*. Under the Act the responsibilities of the position are:

- to monitor written complaints and applications lodged under this Part; and
- to investigate and examine any complaints made by any person in respect of the manner in which an investigation or hearing under this Part has been dealt with; and
- to investigate any other matter relating to disciplinary proceedings under this Part as the Attorney-General may direct.[61]

5.89 The Legal Ombudsman's position is part–time (about 12 hours per week). The Government provides office space, but there is no secretarial or administrative support.

5.90 Whilst the investors who sought the assistance of the Legal Ombudsman were generally positive in their comments about her approach to dealing with their complaints, it appears that the Ombudsman was limited in what she could achieve on their behalf.

5.91 In her evidence to the inquiry, the Legal Ombudsman, Ms Judith Paxton indicated that her powers of investigation were limited in that they did not relate to the complaints themselves, only the manner in which they were investigated. She also indicated to the inquiry that she had expressed concerns to the Attorney-General about both the length of time it was taking for the investigations of the complaints to be finalised; and the length of time that it was taking for any prosecution action to be completed. [62]

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60 Committee Hansard, p.987.

61 Section 85 (1) (a),(b),(c).

62 Committee Hansard, p.1238.

5.92 In her evidence, Ms Paxton said:

> People would write to me or ring me and say that they were upset that they could not get information about their complaint—which they had lodged however many months before—from either the Law Society or Piggott Wood and Baker or McCulloch, as the case might be[63]

5.93 Mr Groom observed in his evidence that the Legal Ombudsman:

> … sees her role as being more limited than might appear on the face of [what is set out in the Act]—that she is there to oversee the complaints processes and disciplinary processes and to make sure that they are in order as she would see it as an independent person. But to investigate matters herself, to look into issues in detail, is probably beyond the power she has in some respects and also beyond the resources.[64]

Freedom of Information

5.94 In their efforts to obtain information from the Law Society about the Solicitors' Guarantee Fund, some clients made application under the Tasmanian *Freedom of Information Act 1991* (FOI). For example, Mr Sierink indicated that he had tried to obtain from the Society, a legal opinion it had obtained from their counsel which set out the circumstances under which a person would have a right to a claim under the Solicitors' Guarantee Fund. He was unsuccessful in obtaining this advice and sought recourse through an application under FOI. The Society took the view that it was not subject to FOI legislation and refused access to the documents. [65]

5.95 Under the Tasmanian Freedom of Information Act the State Ombudsman is responsible for reviewing decisions about access to documents under FOI. However, despite being able to review the decision, Mr Tony Allingham, Senior Investigation Officer from the Office of the Tasmanian Ombudsman, indicated in evidence to the Committee, that the Ombudsman had no ability to enforce a decision regarding access to documents under FOI, and in the case of a disagreement, the only recourse would be to take the matter to the Supreme Court.[66] This would depend on the person's capacity to pay for the litigation, and so a stalemate resulted.

5.96 The Society maintained that it was not subject to the Tasmanian FOI legislation, and this view was based on counsel's advice. Even if it were required to comply, the Society took the view that the information sought was subject to legal professional privilege, and would be exempt.[67]

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63 Committee Hansard, p.1240.

64 Committee Hansard, p.938.

65 Submission No. 184, p.2.

66 Committee Hansard, pp.1042-1043.

67 Submission No 151, p.3.

5.97 The Committee notes that at the end of June 2001 amendments to the Legal Profession Act and the FOI Act were introduced into the Tasmanian Parliament. It is the intent of these amendments that the Law Society will be subject to FOI legislation for the purposes of Parts 8 and 9 of the Legal Profession Act (the disciplinary and monetary protection provisions). The effect of this is that where a client seeks information from the Society regarding its investigations, information held by the Society will be obtainable under FOI.

Access to compensation and financial assistance

5.98 The investors have a number of options for recourse against the solicitors who have mishandled their investments. One option is civil litigation, an option which some investors have taken. Another alternative is to make an application for payment from the Solicitors' Guarantee Fund.

5.99 The Solicitors' Guarantee Fund is a mechanism by which those affected by the fiduciary default of a solicitor can recover their capital but may not receive interest on it. Recovery of the funds depends upon a default order being obtained from the Supreme Court. Whilst anyone affected can apply for an order, the cost involved can be considerable, and beyond the means of individuals. As previously mentioned, legal aid is not available for civil matters.

5.100 In May 2001 payments from the Guarantee Fund to investors in solicitors' mortgage schemes had reached $10.8 million. The payments were made in respect of the Macquarie Law fund ($9.2 million) and McCulloch and McCulloch fund ($1.665 million). The Law Society indicated that there is a further $1.5 million to be paid shortly to the McCulloch and McCulloch investors, with $1.2 million owing, part of which is the subject of litigation.[68] The amounts paid are capital only - no interest. No payments have been made in respect of the Lewis Driscoll and Bull Fund, nor the Piggott Wood and Baker fund.

5.101 The Piggott Wood and Baker fund appears to be the largest fund still operating, with considerable numbers of investors who are waiting for the return of their funds. Some of these will be assisted by the package put together by Garrisons, as the Piggott Wood and Baker fund was the fund in which many of Garrisons clients invested. The remaining investors at present must rely upon sales of mortgage properties, refinancing or civil action. The Committee is somewhat constrained from commenting further about Piggott Wood and Baker, as there are presently matters still before the courts involving that firm.

5.102 The Committee understands that the Tasmanian Attorney-General is currently working with the Law Society to ensure that the fund is maintained at a level adequate to meet the number of potential claims.

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68 Submission No. 150, pp.15-22

5.103 Another avenue for emergency financial support for investors was seeking access to benefits from Centrelink. Witnesses drew the Committee's attention to their perception that Centrelink narrowly construed its deeming provisions under the Social Security Act, and included non-performing assets in its assessment of an individual's eligibility for benefits. However, in response to these concerns, Mr Bernard Harrington, Retirement Manager, Centrelink clarified Centrelink's position by indicating that his agency would provide part pensions on a case by case basis. He told the Committee:

> … no-one in genuine hardship is refused assistance from Centrelink at all. The same rules apply to all investments, whether people have money in questionable solicitors' accounts or other sorts of accounts. … We look at their individual investments, their individual circumstances and their need for ongoing income support under the income and asset test.[69]

5.104 Mr Harrington also indicated that Centrelink operates a financial information service which helps people understand their investments, outlines options and provides an educative function for clients.

The impact of external economic factors

5.105 The Committee was advised that in addition to the problems regarding the regulatory framework, the conduct of the Law Society, and the conduct of some valuers and financial advisers, as well as inadequate access to consumer support, a number of external economic factors might also have contributed to the collapse of some solicitors' mortgage schemes. The Committee was advised that these included the market in which the mortgage funds operated; the structural changes in the lending industry; the deregulation of the banks which created unprecedented competition for the home lending market; and the mortgage funds' move from domestic to commercial lending.

5.106 According to Garrisons, for solicitors' mortgage funds, this resulted in a move away from lower risk lending to higher risk lending.[70] This is clearly substantiated by many of the submissions which reported that their funds were invested in commercial and development projects.[71]

5.107 The Law Society also identified a general downturn in the Tasmanian economy as contributing to the funds' decline.[72] According to the Law Society this affected the borrowers' ability to repay the loans as well as the value of the property secured. As an example, in relation to its own property, the Law Society advised that

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69 Committee Hansard, p.1257.

70 Submission No. 202 p. 10.

71 For example, Submission Nos. 114, 128, 137,155, 159, 164, 169.

72 Submission No. 150, p. 27.

it was finalising the sale of its head office which was purchased for $1.3 million in the early 1990s, and sold for $550,000 in 2001.[73]

5.108 Mr Johnston, ASIC, lent some support to this view. He indicated in his evidence that there had been some decline in property values in Tasmania, which in combination with speculative lending had contributed to the problems with some of the schemes.[74]

5.109 However, this view was not universal. Mr Toomey noted in his evidence:

> There has not been a significant fall in the commercial market, which would knock out two thirds of valuation in the time scale we are looking at. The properties that have suffered the massive falls are where they were inappropriate to lend on in the beginning.…They had on the face of them valuations that were patently incorrect to anyone and in other instances there were no valuations.[75]

Developments during the inquiry

5.110 The Committee is pleased to report that as a result of its initiating this inquiry there have been a number of positive outcomes. As previously mentioned, one of the most significant is the rescue plan, negotiated by ASIC, being implemented by Garrisons Financial Advisers. Garrisons have undertaken to repay capital upon receipt of a signed deed and to pay interest of 6 per cent per annum to clients who have lost money through their referrals. The interest will be paid on or before 31 December 2002.

5.111 In addition other initiatives at the Commonwealth level include the following:

- Centrelink clarified that investors who have lost money through failed schemes can apply for social security assistance where pensions are affected.
- Legislative change has now been implemented which may assist in the prevention of similar problems with solicitors' mortgage schemes. The complete implementation of the Commonwealth Managed Investments Act from October 2001 will bring most schemes under the regulation of ASIC.
- ASIC has commenced a national review of solicitors' mortgage schemes, including a major inquiry into 'run out' practices. These are the funds which have not elected to move to the Managed Investments Act regime, and which must be wound up by 31 October 2001.
- As part of its national review, ASIC has also taken a number of other initiatives including:

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73 Committee Hansard, p. 1211.

74 Committee Hansard, p.1142.

75 Committee Hansard, p.1001.

- instigating criminal action against a former solicitor Mr Thomas Baron, and Mr Haydn Dodge in connection with the solicitors' mortgage investment fund operated by the legal firm, Lewis Driscoll and Bull;
- applying to wind up a number of mortgage schemes;
- negotiating compensation for some investors;
- requiring additional licence conditions for responsible entities; and
- removing responsible entities from operating schemes. [76]

5.112 At the State level, other outcomes to date in relation to solicitors' mortgage schemes in Tasmania include:

- The Tasmanian Valuers Registration Board and the Tasmanian Division of the Australian Property Institute clarified that investors can lodge complaints about valuers where losses have been incurred as a result of inflated property valuations; and
- Changes have also been made to the Tasmanian Legal Profession Act and Freedom of Information Act. These changes commenced on 16 July 2001. These amendments bring the Law Society into the FOI framework where clients seek information regarding legal practices, particularly concerning applications regarding solicitors' disciplinary matters. The amendments also reinforce trustee responsibilities for solicitor trustees by strengthening the penalty regime in relation to breaches of trust.
- On 21 August 2001 the Tasmanian Attorney-General introduced a further amendment clarifying the amendments of the 16 July 2001. This will ensure that the amendments operate retrospectively, and in particular, that the amendments relating to fiduciary default refer to losses suffered after 1 July 1995.

5.113 The Committee is also pleased to note, following discussions with the Tasmanian Attorney-General and others, that it is likely that the majority of the funds will be recovered over time. However, the Committee is concerned to ensure that all participants have access to financial recompense, not only those who have had the benefit of a formal default order through the courts or who have gained compensation through an arrangement with Garrisons.

Conclusions and recommendations

5.114 The Committee is concerned to note that the mortgage schemes as operated by some solicitors had a significant adverse effect on the investing community of Tasmania. The profile of that community mainly includes elderly retirees whose main

76 ASIC 2001 media and information releases 01/277, "Solicitors' mortgage scheme update".

or only investment to generate an income in retirement was the investment they made in a solicitor's mortgage scheme.

5.115 The Committee concludes that much of the financial and emotional distress caused by the failure of some prominent solicitors' mortgage schemes could have been alleviated had there been a more effective regulatory framework, and improved access to consumer information and support.

5.116 The Committee notes that the issues raised in its inquiry into solicitors' mortgage schemes in Tasmania are not unique to that State. There have been problems in other states with mortgage schemes administered both by solicitors and also by finance brokers. However, the Tasmanian experience has distilled the issues because of the effects on a small but discrete community.

5.117 Nationally, Western Australia and Queensland have experienced difficulties with mortgage brokers. Queensland, NSW and to a lesser extent, Victoria have also experienced difficulties with solicitors' mortgage schemes. ASIC has estimated that notwithstanding there are differing definitions of what constitutes default, there are over $370 million of runout loans in default across Australia.[77]

5.118 Subsequent to the Committee taking evidence on solicitors' mortgage schemes in Tasmania, the Committee has been provided with the outcome of the responses received following a discussion of solicitors' mortgage schemes on the Channel 9 *Money* program. This material confirms the extent and nature of the problems being experienced by people in all parts of Australia.

Regulation of solicitor's mortgage schemes- Commonwealth

5.119 Notwithstanding the class exemption granted to the Law Society, in the Committee's view, ASIC as the Commonwealth regulator, was ultimately responsible for the oversight of the regulation of solicitors' mortgage schemes. Although, under the class exemption that role was handed over to the Law Society, ASIC had approved the Society as the regulator. ASIC accepted the Law Society's assurances that its regulation, control and supervision of solicitors' accounts would provide adequate protection and accountability to mortgagors and mortgagees alike.

5.120 The Committee considers that ASIC could have played a more proactive role in oversighting the Law Society's regulation of the schemes. This may have included applying a more appropriate and rigorous review process when repeatedly granting exemptions to the Law Society.

5.121 The Committee is also concerned to note that while these problems occurred in the mid-1990s, ASIC appears to have been either unaware of, or chose to ignore what was happening. It took until February 2001 for ASIC to commence a

77 ASIC 2001 media and information releases 01/277, "Solicitors' mortgage scheme update".

concentrated investigation into the solicitors' mortgage schemes, by which time even more losses had been sustained. The Committee considers that more timely intervention or action by the regulator and the application of more rigorous review processes when granting the exemptions, could have mitigated the resultant losses endured by the investors.

5.122 The Committee acknowledges the work which has been done by ASIC since that time, including identifying strategies and initiatives for the ongoing regulation of the schemes. ASIC has advised that these strategies will:

- focus on the need for truly independent valuations to underpin mortgage security values;
- impose more specific lender conduct guidelines, particularly in respect of borrower's credit assessment;
- introduce more specific disclosure and reporting requirements; and
- query the public policy merits of permitting mortgage broking businesses to operate under the guise of a legal practice.

5.123 In relation to the last matter, the Committee particularly welcomes ASIC'S intention to examine the nature of the mortgage broking businesses, and expects this will also include considering the issue of whether lawyers are sufficiently qualified to undertake this work.

5.124 The Committee notes that the regime proposed under the *Managed Investments Act 1998* for the regulation of the majority of mortgage schemes, (including those operated by solicitors) will be more rigorous. The Committee expects that this will to a large extent alleviate many of the problems associated with the regulation of solicitors' mortgage schemes.

5.125 In the meantime, the Committee considers that with ASIC assuming responsibility for the regulation of most solicitors' mortgage schemes from October 2001 it would be appropriate for ASIC to work with the Tasmanian Government and the Law Society to devise strategies in relation to those funds with fewer than 20 members which will fall outside ASIC's supervision. This will ensure that those funds still enjoy benefits of a robust regulatory framework.

5.126 The Committee also notes that there are currently two funds, Lewis Driscoll and Bull and McCulloch and McCulloch being administered by court-appointed managers. Under the present arrangements, the costs associated with the management of the practices are paid by the Solicitors' Guarantee Fund.

5.127 The Committee is concerned that once ASIC takes over managed funds in October it is possible that they may replace the current court-appointed managers with receivers. In the view of the Committee this is undesirable because replacement managers will take some time to become familiar with the matters being handled, and because costs of receivers will be met from the sale of fund assets, not the Solicitors'

Guarantee Fund. The Committee considers that it is imperative to ensure that the investors' funds are not depleted unnecessarily.

Recommendations

5.128 The Committee recommends that ASIC work with both the Tasmanian Government and the Law Society to devise strategies for the ongoing management of McCulloch and McCulloch and Lewis Driscoll and Bull to the benefit of the clients awaiting compensation.

5.129 The Committee recommends that ASIC work with State governments and relevant law societies to ensure that appropriate strategies are developed for the supervision of mortgage investment funds with fewer than 20 members which will continue after 31 October 2001.

Regulation of solicitors' mortgage schemes - State

5.130 The Committee notes that a number of problems in the regulation of solicitors' mortgage schemes which were drawn to its attention during the inquiry pertained to perceived deficiencies in State legislation. These include deficiencies in:

- the *Legal Profession Act 1993* and *Rules of Practice 1994*;
- The *Trustee Act 1898;*
- The *Freedom of Information Act 1991;* and
- The *Valuers Registration Act 1974*.

5.131 As noted above, the Tasmanian Government has made amendments to the legislation applying to the legal profession, (particularly where solicitors act as a trustee) and freedom of information, which are designed to rectify some of the problems. The Committee commends the Tasmanian Government for its prompt action in introducing these amendments at this time. Those amendments are to be made retrospective, and in the case of fiduciary default, the amendment is retrospective to 1 July 1995.

5.132 However the Committee considers that there is scope for an even broader review of the State legislative framework pertaining to the regulation of solicitors' mortgage schemes. This might include a review of disciplinary procedures and penalties for solicitors who have been found to have engaged in professional misconduct. Such a review may assist to restore public trust and confidence in solicitors generally as well as other professionals associated with the schemes.

5.133 The Committee also notes that in relation to the Solicitors' Guarantee Fund, the Tasmanian Attorney-General is also currently working with the Law Society to ensure that the fund is maintained at a level adequate to meet the number of potential claims.

5.134 Further, the Committee believes that the level of funds in the Solicitors' Guarantee Fund should not be the basis for the amount of compensation awarded. In the view of the Committee the level of compensation should be set as return of capital plus interest at a specified rate – for example, the rate of interest applying to civil judgments in the Supreme Court.

Regulation of solicitors' mortgage schemes - the Law Society

5.135 The Committee's view is that, while there were other factors which contributed to the failure of some solicitors' mortgage schemes in Tasmania, the Law Society of Tasmania was dilatory in its response to the problems, and in its willingness to take positive action to address them. In particular, the Society:

- failed to regulate mortgage schemes adequately according to their undertaking to ASIC;
- took a narrow and inward looking view of its responsibilities;
- was unable to deal with complaints and problems efficiently and promptly;
- gave the appearance of protecting recalcitrant lawyers in dealing with complaints about solicitors mortgage schemes; and
- failed to adopt modern management practices in its oversight of its member firms.

5.136 The evidence given to the inquiry, indicated that the public, too, was concerned that regulation of the legal profession lacked rigour. The Society believed, because ASIC had granted a class exemption from the Corporations Law that this meant that the Society's rules and practices were adequate to ensure that the mortgage schemes were properly operated, and the clients protected.

5.137 The Committee considers that if resources were so scarce as to inhibit the discharge of its obligations, it was incumbent on the Law Society to report the matter to the regulator, ASIC, and seek the regulator's assistance to develop alternative strategies. This may have included approaching ASIC to develop a strategy for providing more effective inspection and audit services, or have handed the responsibility for regulation back to ASIC.

5.138 The Committee acknowledges that the impact of the fluctuations in the Tasmanian economy, particularly the downturn in its property market, affected the environment in which the schemes operated. However, the Committee also notes that, in fact, other mortgage schemes were in difficulty in States which were not undergoing the same economic fluctuations as Tasmania. Had the conventional loan ratios been adhered to, the problems would have been minimised - irrespective of the condition of the economic environment.

5.139 The Committee considers that the combination of the Society's narrow interpretation of its regulatory role, the lack of rigour with which it executed that role,

as well as its contracting resources inhibited its ability to regulate mortgage schemes effectively.

5.140 The Committee was advised by the Law Society that its Rules of Practice only provided for inspection not audit of the trust accounts. However, the Committee notes that the *Legal Profession Act 1993* authorises the Society to make rules regarding the inspection and audit of trust accounts.

5.141 The Committee was not impressed by the Society's description of Mr Toomey's views on audit and accountability as 'arrant nonsense'. Nor was the Committee impressed with the Society's reluctance to consider a levy on members as a compensatory initiative. The Committee considers such high handed comments as indicative of the Society's unwillingness to wholeheartedly examine its regulatory responsibilities and make an honest assessment of them.

5.142 Furthermore, the Committee considers that the fine semantic distinctions proffered by the Law Society in their interpretation of their existing statutory responsibilities, particularly concerning the distinction between audits and inspections, concealed an unwillingness to critically analyse the way in which the mortgage schemes were conducted, and to take steps to regulate them in accordance with the responsibilities imposed by the ASIC exemptions.

5.143 The Committee also notes that the audit/inspection requirements were there to assist the Society's members as well as the clients who sought the members' advice. The Society's members suffered from the limitations imposed on its audit practices as well as the clients.

5.144 The Committee believes if the Rules themselves had not been narrowly construed by the Society, and had the Society been more proactive in ensuring that the rules were reviewed regularly to keep pace with the changing financial and commercial environment, the effect of the poor practices which led to the schemes' collapse could at least have been mitigated.

5.145 In the view of the Committee more regular independent audits of practices would have assisted the Law Society in its regulatory role.

5.146 The Committee considers that the Law Society could have made more effective use of the trust account inspection reports which were prepared for them. In the view of the Committee the information contained in the inspection reports may have alerted the Society to the problems at a much earlier time.

5.147 The Committee notes that the Law Society's responses to complaints about solicitors appear to have been dealt with less than expeditiously, and that the Legal Ombudsman also expressed concerns about this matter. The Committee considers that this clearly points to a need for the Society to review and improve its complaint handling procedures.

5.148 The Committee considers that any organisation that manages other people's funds must have a consumer protection role and also a moral responsibility to those consumers. Had the Society had a greater consumer focus, the public perception of lawyers as well as the handling of the solicitors' mortgage schemes might have been more positively and efficiently managed.

5.149 The Committee notes that there is an inherent conflict of interest faced by the Law Society in the discharge of its statutory duties. While the Society must, on the one hand, promote the image of solicitors, it must also, on the other hand, also deal with disciplinary matters. In the view of the Committee, the interests of consumers should not be compromised by the Society's advocacy role on behalf of its members.

5.150 The Committee observes that, under current arrangements, the Legal Ombudsman has limited investigative powers and that the Tasmanian Government is currently reviewing the role of the Legal Ombudsman. The Tasmanian Government is also considering the need for an independent body with investigative powers to handle allegations of professional misconduct.

5.151 The Committee also notes the lack of strategic planning by the Law Society, in its responses to the Committee's questions regarding compensation. It is clear to the Committee that there will be a need for further sources of compensation to investors to be considered. In the Committee's view, the Society's evasive responses to the possibility of a practitioners' levy was indicative of its short sighted and narrow approach to the management of all aspects of the mortgage schemes.

5.152 The Committee considers that notwithstanding the ASIC exemption, the responsibility for regulation of solicitors' mortgage schemes in Tasmania rested with the Law Society of Tasmania.

Recommendations

5.153 The Committee recommends that the Tasmanian Government further review the *Legal Profession Act 1993* in order to ensure that the benefit of the amendments to the *Legal Profession Act 1993* and the *Freedom of Information Act 1991* are available to the clients who have lost funds, as well as those who may do so in the future. The review should also consider the following areas:

- **disciplinary procedures and penalties for legal practitioners who are guilty of professional misconduct;**
- **complaints procedures, including independent investigative powers by a separate body;**
- **regular independent audits of legal practices;**
- **consumer information; and**
- **a requirement that the Law Society of Tasmania be subject to regular reviews conducted by an external unrelated body. The reviews should focus**

on the extent to which the Society meets its statutory obligations to its members and their clients.

5.154 The Committee recommends that the Law Society of Tasmania adopt a more strategic, open and less rigidly insular approach to its relationships with consumers as well as its members.

5.155 The Committee is concerned to ensure that the financial burden arising from the action of defaulting solicitors is borne largely by those who have been made the subject of a default order. The Committee notes that the Solicitors' Trust (a separate statutory body established under the *Legal Profession Act 1993* to administer the Solicitors' Guarantee Fund) has the power to recover funds under section 113 of the *Legal Profession Act 1993,* where those funds are paid to a client under a default order against a solicitor.

5.156 The Committee is also concerned to ensure that all victims of failed solicitors' mortgage schemes have access to compensation for the losses they have sustained. In addition to individuals taking civil action against the funds and their managers, the only other source of compensation is the Solicitors' Guarantee Fund. The Committee considers that the Tasmanian Government should amend the Legal Profession Act to allow all victims of failed mortgage schemes, irrespective of whether a default order has been issued by the Court, to have access to compensation from the Solicitors' Guarantee Fund.

5.157 The Committee considers that the Tasmanian Government should also amend the Legal Profession Act to guarantee that where compensation is payable, that compensation includes 100 per cent of the capital invested, together with interest at the rate applying to civil judgments in the Supreme Court.

5.158 The Committee also considers that where a State government acknowledges the existence of solicitors' funds and schemes and has legislated to regulate them, that government has a responsibility to ensure that they are adequately regulated and to provide appropriate consumer protection mechanisms. These should include access to avenues of compensation.

Recommendations

5.159 The Committee recommends that the Tasmanian Government improve access to compensation for all victims of failed solicitors' mortgage schemes.

5.160 The Committee also recommends that the Tasmanian Government continues to ensure that the Solicitors' Guarantee Fund is maintained at a level which is sufficient to meet anticipated needs. This might include legislating to require solicitors to contribute in advance to the fund to ensure an appropriate level of liquidity.

5.161 The Committee is greatly concerned that the Piggott Wood and Baker fund, although in 'run-out' mode, is the largest fund still operating, and is not under management by a court-appointed manager despite having significant problems.

Valuation practices

5.162 The Committee heard that there were many problems with some of the valuations given to properties secured under the schemes, and this was a significant contributing factor to the losses from a number of property sales. The Committee notes that, as part of a review of the *Valuers Registration Act 1974* by the Tasmanian Government, proposed new legislation governing valuation practices will prescribe a code of ethics and a more adequate complaints mechanism, and adequate compensation mechanisms to be administered by the Tasmanian Director of Fair Trading.

5.163 The Committee welcomes this development but seeks assurances from the Tasmanian Government that the complaint process will involve a proper hearing of complaints rather than a mere administrative process.

5.164 The Committee notes that the Australian Property Institute (Tasmanian Division) has submitted a proposal which sets out a comprehensive strategy for mortgage lenders and valuers. This proposal requires the mortgagee and the mortgagor to obtain several independent valuations of properties proposed as security. The Committee considers that this proposal has considerable merit, as it may provide some protection against overvaluing and its consequences.

Recommendation

5.165 The Committee recommends that the Tasmanian Government:

- **evaluate the proposal developed by the Australian Property Institute with a view to incorporating its features in its review of the *Valuers Registration Act 1974*; and**
- **consider amending the solicitors' Rules of Practice to require solicitors to obtain more than one valuation for properties securing mortgages under the solicitors' mortgage schemes.**

Financial advisers

5.166 The Committee is concerned at the role financial advisers may have played in the many problems which have arisen for clients of solicitors' mortgage schemes, particularly the lack of product knowledge and the reliance on the material provided by the promoters of the schemes, rather than researching and developing their own material.

5.167 It is clear to the Committee that the significant influx of investments directed into a small number of solicitors' funds by Garrisons fundamentally altered the scale and nature of the schemes. Garrisons made these investments with little initial

research and no ongoing monitoring of the state of the investments. The firm also displayed little regard for the nature and extent of the fees which would be charged to its clients.

5.168 The Committee notes that lack of reliable consumer information (partly the result of lack of product knowledge) given by Garrisons to their clients was a matter of concern to those clients. In the view of the Committee information on investment options in plain English is a necessary part of client services, and should be provided to all investors.

Recommendation

5.169 The Committee recommends that financial advisers ensure that the consumer information provided to investors in mortgage schemes is concise, in plain English, thoroughly researched and complies with ASIC disclosure and information requirements.

5.170 The Committee notes that during the inquiry ASIC negotiated a rescue plan with Garrisons for their investors. Under the plan, Garrisons have undertaken to repay capital and to pay interest of 6 per cent per annum to clients who lost money through their referrals. The interest will be paid on or before 31 December 2002.

5.171 The Committee commends the Garrisons investor compensation rescue plan, and considers this to be a positive outcome for the inquiry and for the investors. The Committee is anxious to ensure that the momentum for compensating clients of Garrisons is not lost, and encourages ASIC and Garrisons to continue to work towards the fulfilment of a prompt and efficient payment schedule.

Recommendation

5.172 The Committee recommends that ASIC and Garrisons Financial & Retirement Specialists ensure that compensation payments to be made under the rescue package negotiated between ASIC and Garrisons are made to clients without delay.

5.173 The Committee considers that the rescue plan has provided a significant precedent, which demonstrates to investors the importance of dealing with a company which is prepared to stand behind its clients and to make good any shortfalls in the event of financial loss. In the view of the Committee, Garrisons has paid a high price to restore its good name and restore the confidence of investors. The Committee reiterates that Garrisons should be commended for taking this most positive action.

Senator John Watson
Committee Chair

APPENDIX 1

CHRONOLOGY OF EVENTS LEADING TO THE COLLAPSE OF COMMERCIAL NOMINEES OF AUSTRALIA PTY. LIMITED

- Commercial Nominees of Australia Pty. Limited's Enhanced Cash Management Trust (ECMT) was established by a Deed dated 30 June 1998[1] and acted as the trustee of approximately 500 small APRA funds (SAFs), a master trust known as the Confidens Investment Trust (Confident), two trusts known as Enhanced Equity Fund (EEF) and the Enhanced Cash Management Trust (ECMT), and a number of public offer superannuation funds.
- In March 2000 APRA commenced investigations of CNA in relation to the prospect that three public offer superannuation funds (of which CNA was the trustee) may suffer substantial losses as a result of investments by those funds in the ECMT. The three funds were the Australian Workforce Eligible Rollover Fund (AWERF), the Network Superannuation Fund and the Midas Superannuation Fund.
- In April 2000, APRA required CNA to engage an investigator (PricewaterhouseCoopers) to undertake an independent review of the financial affairs of the three funds.
- The Board of CNA froze all withdrawals from the ECMT on 7 November 2000.
- In December 2000, after receiving the independent review, APRA removed CNA as the trustee of those three funds
- APRA, working closely with ASIC, removed CNA as the trustee of those three funds.
- On 13 February 2001, ASIC obtained orders to appoint a receiver to control the assets of Confidens, who has since indicated that he is confident he will recover at least 80 cents in the dollar on behalf of the trust's investors.
- ASIC also facilitated the appointment of a new trustee for the ECMT and the EEF, which will work closely with ASIC to maximise the recovery of assets to both funds.
- On 14 February 2001, APRA revoked CNA's approval as an approved trustee and removed CNA as the trustee of the 500 or so SAFs.
- On 20 March 2001, APRA appointed KPMG to investigate the SAFs that had invested with the ECMT, in order to gather evidence to assist APRA in any recovery action that APRA may undertake on behalf of fund members.

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1 Submission Ferrier Hodgson, Annex C, p. 2

- On 29 March 2001, APRA removed CNA as trustee of two closed public offer superannuation funds.

On 10 May 2001, CNA was placed into liquidation.[2]

2 Senate Hansard, 28 June 2001, p. 25104

APPENDIX 2

ESTIMATED FINANCIAL POSITION – ECMT
DRAFT UNAUDITED ACCOUNTS AS AT 30 JUNE 2000

Draft unaudited accounts at 30 June 2000 show the estimated financial position of the ECMT was $27,633,181 in assets. This comprised approximately:

- $3.1million cash at bank;
- $5.5 million loan to Peel Valley Unit Trust which included two properties at McGraths Hill and Wilberforce;
- $0.3 million loan to Peel Valley Mushrooms Ltd, the principal asset now being vacant land near Tamworth;
- $1.1 million loan to Combined Mushroom Farms Pty Ltd;
- $12.1 million loan to Confidens Investment Trust (secured);
- $1.1 million loan to Equity Enhanced Fund;
- $3.5 million in loans re Midway Gardens Partnership; and
- $0.9 million in other loans.

Liabilities included a $12.3 million secured loan from the Colonial State Bank, plus management and trustee fees and expenses totalling $0.4 million.

(Source: Submission No. 226, Annexure 'E', p. 2.)

APPENDIX 3

INTEREST, FEES AND CHARGES FOR SOLICITORS' MORTGAGE SCHEMES - SOME EXAMPLES

Firm Name	Security	Term	Type of loan	Notice for withdrawal	Interest Rate	Fees payable
Piggott Wood and Baker (1995/6 documents)	Registered first mortgage over Tasmanian real estate.	Not limited.	Interest only, repayable on demand.	One month.	Market forces; 9.4% at 1/7/96	Percentage of investment (appears to be between .4 and .6) FID payable by the investor.
Clerk Walker and Stops (1995 documents)	Registered mortgage over real estate.	Prefer 12 months minimum.	Not stated- appears to be interest only.	<$5000 –24 hours >$5000 as soon as possible but within three months.	9% in Sept 1995.	Variable: not less than 1.5% per annum.
Lewis Driscoll and Bull (document undated)	First mortgage or collateral second mortgage.	Prefer 3 year term with extension.	Not stated- appears to be interest only.	Urgent withdrawal on 3 months notice available.	Determined by firm according to market conditions. Reduced rate available of up to 2% to encourage prompt payment.	.5% per annum variable from time to time as notified. Federal and State Government charges and duties.

APPENDIX 4

SOLICITORS' MORTGAGE SCHEMES IN TASMANIA - CHRONOLOGY

Solicitors' mortgage schemes have existed in Tasmania (as in the rest of Australia) since the mid- 19th century. They have come to notice in the last 10 years along with other investment products.

1992 Law Society obtains an exemption from the (then) ASC from the requirements concerning mortgage funds contained in the corporations law.

1993 Legal Profession Act and Rules 1993 consolidate and replace legislation regulating the profession and the Solicitors' Trust.

1996 Problems with the management of the Macquarie Law Mortgage fund emerge and a manager is appointed to the practice.

1997 The principal of Macquarie Law Andrew Hurburgh is struck off the roll of practitioners for matter unrelated to his mortgage practice. Law Society states that investors in Macquarie Law receive all their capital with the assistance of the Solicitors'Guarantee Fund.

1997 Alastair McCulloch, (McCulloch and McCulloch) admits to the Law Society that he has not complied with the Rules of Practice in respect of four mortgages in his practice. A default order was obtained in relation to those mortgages.

1998 (April and May) Toomey Maning and Co lodge complaints with the Law Society regarding the firm McCulloch and McCulloch.

1998 Law Society resolves to investigate both Quentin and Alastair McCulloch in relation to their administration of their fund. The investigations are still continuing.

1998 Irregularities in the fund managed by Lewis Driscoll and Bull appear. A manager is appointed in December 1998.

1998 Difficulties become apparent in the fund managed by Piggott Wood and Baker. A letter is sent to the investors indicating that Piggott Wood and Baker would no longer continue to pay regular interest on investments. Previously, investors received interest payments whether or not the borrower had made a repayment. (This practice had been mentioned by the society in its submissions to the ASC/ASIC as extra security and stability to the schemes).

1999 Principal of Lewis Driscoll and Bull (Thomas Baron) is struck off the roll of practitioners for professional misconduct in the management of his mortgage fund.

2000 **(**December**)** ASIC assumes regulatory responsibility for solicitors' mortgage schemes under the *Managed Investments Act 1998*. Law Society now responsible for monitoring the winding up of the mortgage practices, which have not elected to transfer to the ASIC supervised scheme.

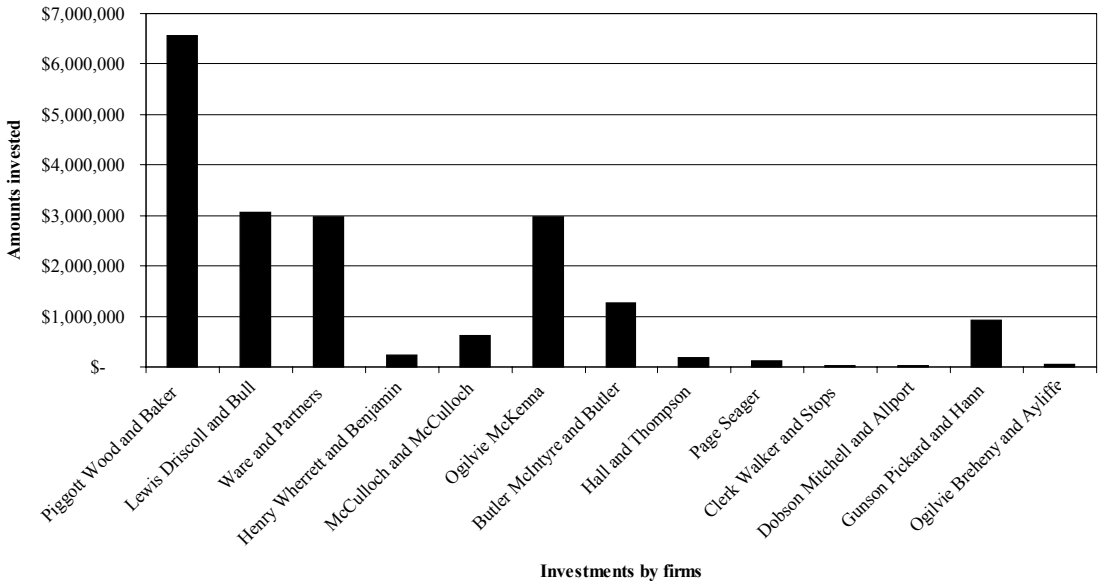
2001 ASIC announces a nationwide audit of solicitors' mortgage schemes.

2001 (April – May) Extensive publicity regarding mortgage schemes in press and in Tasmanian Parliament. Consumers outline their difficulties in obtaining their funds from the schemes; in some cases it appears there will be no funds available to return to investors.

2001 **(**31 October) Deadline for winding up of schemes under current arrangements (run-out schemes) not subject to Corporations Law.

APPENDIX 5

TOTAL AMOUNTS INVESTED BY GARRISONS IN SOLICITORS' MORTGAGE SCHEMES, 1989-1998



APPENDIX 6

FUNDS INVESTED BY GARRISONS ANNUALLY PER FIRM 1989-1998

	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98	1998	TOTAL
Piggott Wood and Baker					$ 80,000	$ 1,683,392	$ 1,713,676	$ 2,202,942	$ 833,833	$ 55,000	$ 6,568,843
Lewis Driscoll and Bull						$ 266,151	$ 1,109,790	$ 1,266,824	$ 419,763		$ 3,062,528
Ware and Partners						$ 759,070	$ 969,901	$ 1,100,020	$ 145,180		$ 2,974,171
Henry Wherrett and Benjamin						$ 51,195	$ 183,001				$ 234,196
McCullloch and McCulloch							$ 140,791	$ 363,021	$ 125,116		$ 628,928
Ogilvie McKenna	$ 30,000	$ 10,000	$ 34,000	$ 20,000		$ 1,239,949	$ 855,459	$ 745,465	$ 40,197		$ 2,975,070
Butler McIntryre and Butler	$ 20,000	$ 30,000			$ 143,500	$ 684,419	$ 175,194	$ 116,250		$ 90,000	$ 1,259,363
Hall and Thompson						$ 189,623					$ 189,623
Page Seager						$ 115,326					$ 115,326
Clerk Walker and Stops			$ 10,000			$ 9,083					$ 19,083
Dobson Mitchell and Allport						$ 18,769					$ 18,769
Gunson Pickard and Hann						$ 268,592	$ 242,610	$ 321,207	$ 80,000		$ 912,409
Ogilvie Breheny and Ayliffe						$ 53,180					$ 53,180
TOTAL:	**$ 50,000**	**$ 40,000**	**$ 44,000**	**$ 20,000**	**$ 223,500**	**$ 5,338,749**	**$ 5,390,422**	**$ 6,115,729**	**$ 1,644,089**	**$ 145,000**	**$ 19,011,489**

APPENDIX 7

SUBMISSIONS RECEIVED

1. Mr Peter Williams, WA
2. Mrs Patricia A. King, NSW
3. Mr Dan Scheiwe, Queensland University of Technology, QLD
4. Mr Peter Armstrong, VIC
5. Industry Funds Forum (IFF)
6. Australian Consumers' Association (ACA)
7. Australian Taxation Office (ATO)
8. The Institute of Chartered Accountants in Australia
9. Mr Jeremy Porteus, WA
10. Care Incorporated, Financial Counselling and Consumer Credit Legal Service
11. Australian Securities and Investments Commission (ASIC)
12. Consumer Credit Legal Service Inc
13. National Farmers' Federation (NFF)
14. WA Shearing Contractors Association (Inc)
15. NFF (Supplementary Submission)
16. Australian Association of Permanent Building Societies
17. Association of Superannuation Funds of Australia (ASFA)
18. NRMA
19. William M. Mercer Pty Ltd
20. Australian Society of Certified Practising Accountants (Now CPA Australia)
21. Ms Fiona Ogilvy-O'Donnell, VIC
22. Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU)

23. Australian Prudential Regulation Authority
24. Mr John Teasdale, SA
25. Council of Small Business Organisations of Australia Ltd (COSBOA)
26. Financial Services Consumer Policy Centre (FSCPC)
27. Investment & Financial Services Association (IFSA)
28. Phillips Fox Actuaries and Consultants
29. Australian Council of Trade Unions (ACTU)
30. Institutional Analysis Pty Ltd
31. AMP
32. Corporate Super Association
33. Process Pack Pty Ltd
34. Goodman Fielder Limited
35. Mr Shawn Fracchia, ACT
36. Westpac Banking Corporation
37. Puzzle Financial Advice P/L
38. Towers Perrin
39. AMWU (Supplementary Submission)
40. ASFA (Supplementary Submission)
41. Mr Shawn Fracchia, ACT (Supplementary Submission)
42. Queensland Furnishing Industry Superannuation Trust (QFIST)
43. Mr Geoffrey Heaton, QLD
44. Association of Independent Retirees Inc, SA
45. Industry Fund Services Pty Ltd
46. Puzzle Finance Advice P/L (Supplementary Submission)
47. Mr Gary Lanham, Minter Ellison, QLD
48. Ms Carmel Reading, QLD

49. Institute of Actuaries of Australia

50. Tasplan Super

51. The Institute of Chartered Accountants in Australia (Supplementary Submission)

52. ACTU (Supplementary Submission)

53. De Santis Management Agency

54. Australian Conservation Foundation

55. Puzzle Finance Advice P/L (Supplementary Submission)

56. Ms Carmel Reading, QLD (Supplementary Submission)

57. Mr Pat Hannan, QLD

58. IFF (Supplementary Submission)

59. Towers Perrin (Supplementary Submission)

60. REST Superannuation

61. Tasplan Super (Supplementary Submission)

62. Mr Greg Lisk, NSW

63. Deloitte Touche Tohmatsu

64. ASFA (Supplementary Submission)

65. Phillips Fox, Actuaries and Consultants (Supplementary Submission)

66. Insurance Council of Australia Ltd (ICA)

67. Hotel Motel & Accommodation Association of Queensland (HMAA Queensland)

68. Confidential

69. Confidential

70. Australian Chamber of Commerce and Industry

71. Confidential

72. Financial Planning Association of Australia Ltd (FPA)

73. APRA (Supplementary Submission)

74. First Samuel Limited

75. ATO (Supplementary Submission)

76. Department of the Treasury

77. The Institute of Chartered Accountants in Australia (Supplementary Submission)

78. Investment Initiative

79. Institute of Actuaries (Supplementary Submission)

80. Australian National Audit Office (ANAO)

81. Superannuation Complaints Tribunal

82. ACA (Supplementary Submission)

83. Confidential

84. Confidential

85. Mr Daryl Dixon, Writer and Consultant, ACT

86. Association of Financial Advisers

87. Department of the Treasury (Supplementary Submission)

88. APRA (Supplementary Submission)

89. Law Employees Superannuation Fund (LESF)

90. APRA (Supplementary Submission)

91. ASIC (Supplementary Submission)

92. Australian Competition & Consumer Commission

93. ATO (Supplementary Submission)

94. Confidential

95. Confidential

96. Mr John Crosby

97. Mr & Mrs R D & M I Gregg

98. Morton Family Superannuation Fund

99. Mr Spencer Bell
100. Name withheld
101. Mr John Crosby (Supplementary Submission)
102. Mr & Mrs Richard & Jennifer Kaan
103. Mr & Mrs P R & V T Marshall
104. Mr Dominic Galati
105. Name withheld
106. Watts Family Superannuation Fund
107. Saxby Bridge Financial Planning Pty Ltd
108. Price Waterhouse Coopers
109. APRA (Supplementary Submission)
110. Confidential
111. Mr & Mrs R D & M I Gregg (Supplementary Submission)
112. Mr & Mrs P R & V T Marshall (Supplementary Submission)
113. The McKellar Family Superannuation Fund
114. Name withheld
115. Mr John Crosby (Supplementary Submission)
116. Australian Securities & Investments Commission (ASIC)
117. Mr & Mrs P Sautelle
118. Mr Phil Dally
119. Mrs Helen Hills
120. Name withheld
121. APRA (Supplementary Submission)
122. Confidential
123. Ms J M Schott
124. Mr & Mrs L & S Morrell

125. Mr Michael Spaulding
126. Mr Ian Young
127. Mr Gordon Dilger
128. Name withheld
129. Ms Cherylyn Harris
130. The Hon Ray Groom MHA
131. Mr & Mrs Arnold & Maureen Sierink
132. Ms Jocelyn Walsh
133. Name withheld
134. Mr & Mrs Neville & Margaret Newman
135. Mr Alastair Shepherd
136. Mr John Woods
137. Mr P C Toomey
138. Mr Jeff Trimmer
139. Mrs Janice Holland
140. Mr & Mrs Colin & Laurel Trevena
141. Tasmanian Ombudsman
142. Mr John Meyer & Ms Jill Dalrymple
143. Mr & Mrs David & Marie Hudson
144. Ms Gillian Maguire
145. Confidential
146. Mr & Mrs G R & M J Shuptrine (Supplementary submission)
147. John, the Duke of Avram
148. Ms Margaret Mitchell
149. Department of Justice and Industrial Relations
150. The Law Society of Tasmania

151. The Law Society of Tasmania (Supplementary submission)
152. Garrisons Financial Advisers
153. Tasmania Police
154. Mr Arnold Sierink (Supplementary submission)
155. Mr Peter Worrall
156. Confidential
157. Mr & Mrs Pidd
158. Ms Pev McIntyre
159. Mr N W Tesdorf
160. McCulloch & McCulloch Mortgage Fund
161. Mr Anthony Clennett
162. D W & I M Tapping
163. Piggott Wood & Baker
164. Mr Peter Kang-Scheit
165. Mr Jon Jovanovic
166. Rae & Partners, Lawyers
167. Mr N W Tesdorf
168. Ms Anne Moutafis OAM
169. Mr Charles Phillips
170. Confidential
171. Department of Justice & Industrial Relations (Supplementary submission)
172. Mr James G Turner
173. E R Henry Wherrett & Benjamin
174. Confidential
175. Mr David Newitt
176. Piggott Wood & Baker

177. Tasmanian Trustees Limited

178. Paul Cook & Associates

179. Eastside Financial Services

180. Resource Management & Planing Appeal Tribunal

181. Mr & Mrs A D & M Oldham (Supplementary Submission)

182. Kingborough Council

183. Dobson, Mitchell & Allport

184. Mr & Mrs Arnold & Maureen Sierink (Supplementary Submission)

185. Garrisons Pty Ltd (Supplementary Submission)

186. Mr D Gillie, Mrs S Sutcliffe & Mr B Griffin

187. Barringtons

188. Mr Mark Johnson

189. Mr Donald Hurburgh

190. Legal Ombudsman, Tasmania

191. Murdoch Clarke

192. Official Liquidator of D W & I M Tapping Pty Ltd

193. Australian Stock Exchange Limited (ASX)

194. Mr J Meyer (Supplementary Submission)

195. Mr Sydney Dwyer

196. The Solicitors' Trust

197. APRA (Supplementary Submission)

198. Australian Securities and Investments Commission (ASIC) (Supplementary Submission)

199. Australian Property Institute (Tasmanian Division)

200. Valuers Registration Board

201. The Law Society of Tasmania (Supplementary Submission)

202. Garrisons Pty Limited (Supplementary Submission)

203. Confidential

204. Confidential

205. Sorell Council

206. Garrisons Corporate Services (Supplementary Submission)

207. Mr Peter Worrall (Supplementary Submission)

208. The Law Society of Tasmania (Supplementary Submission)

209. Australian Stock Exchange Limited (Supplementary Submission)

210. Department of Police and Public Safety, Tasmania (Supplementary Submission)

211. P G Brownrigg & Associates

212. Mr Jeff Trimmer (Supplementary Submission)

213. Department of Justice & Industrial Relations, Tasmania (Supplementary Submission)

214. Name withheld

215. Australian Securities & Investments Commission (Supplementary Submission)

216. APRA (Supplementary Submission)

217. Mrs Janice Holland (Supplementary Submission)

218. Confidential

219. Confidential

220. Official Liquidator of Commercial Nominees of Australia Limited

221. Australian Securities & Investments Commission (Supplementary Submission)

222. Arthur Andersen

223. Confidential

224. National Institute of Accountants

225. APRA (Supplementary Submission)

226. Ferrier Hodgson Management

227. Mr S P Dwyer (Supplementary Submission)

228. Murdoch Clarke (Supplementary Submission)

229. Mr C E Clark

230. Clerk Walker & Stops

231. Garrisons Corporate Services (Supplementary Submission

232. APRA (Supplementary Submission)

233. APRA (Supplementary Submission)

234. Legal Ombudsman (Tasmania) (Supplementary Submission)

235. Australian Property Institute, Tasmanian Division

236. The Institute of Chartered Accountants in Australia

237. APRA (Supplementary Submission)

(Submissions 1-95 were tabled on 22 May 2001 when the Committee tabled its report on term of reference (c) *Enforcement of the Superannuation Guarantee Charge*. Submissions 96-237 were tabled on 20 August 2001 when the Committee tabled its First Report on term of reference (a) *Prudential Supervision and Consumer Protection for Superannuation, Banking and Financial Services*.)

APPENDIX 8

WITNESSES WHO APPEARED BEFORE THE COMMITTEE AT PUBLIC HEARINGS

Monday, 15 May 2000, Sydney

Australian Mutual Provident Society Ltd
Mr Kevin Casey, Senior Strategy and Technical Adviser
Mr Gerald Naughton, Senior Investment Manager

Association of Superannuation Funds of Australia
Dr Michaela Anderson, Director, Policy and Research
Ms Philippa Smith, Chief Executive Director

Financial Services Consumer Policy Centre
Mr John Berrill, Partner Superannuation, Martin Blackburn Cashman
Mr Chris Connolly, Director
Mr Khaldoun Hajaj, Researcher

Australian, Food, Metals, Engineering Printing and Kindred Industries Union
Mr Barry Terzic, National Research Officer

Retail Employees Superannuation Trust
Mr Damian Hill, Administration Manager
Mr Elliott Sabbah, Operations Manager

Phillips Fox Actuaries and Consultants
Mr Michael Rice, Managing Director

Investment and Financial Services Association
Miss Lynn Ralph, Chief Executive Officer
Ms Annabelle Kline, Senior Policy Manager

Tuesday, 16 May 2000, Sydney

Australian Stock Exchange
Ms Rosemary Kennedy, National Manager, Interest Rates Markets
Mr Michael Roche, Executive General Manager, Strategic Planning and Corporate Relations

Australian Centre for Global Finance, Treasury
Mr Leslie Hosking, Chief Executive Officer
Miss Maryanne Mrakovcic, General Manager

Australian Financial Markets Association
Mr Kenton Farrow, Chief Executive
Mr John Rappell, Director Research and Policy

Dr George Gilligan

Prof Gordon de Brouwer

Vanguard Investments Australia Ltd
Mr Jeremy Duffield, Managing Director

Skandia Assurance and Financial Services
Mr Johan Hofvander, Regional Manager, Asia-Pacific
Mr Ross Laidlaw, Country Manager

International Banks and Securities Association of Australia
Mr Robert Webster, Executive Director

Friday, 9 June 2000, Melbourne

Superannuation Complaints Tribunal
Mr Graham McDonald, Chair
Ms Nicole Cullen, Deputy Chairperson
Mrs Margaret McDonald, Director

Osborne Associates
Mr Bradley Treadwell, Managing Director

Insurance Council of Australia Ltd
Mr Philip Maguire, Deputy Chief Executive
Ms Joan Fitzpatrick, Member International Committee for General Insurance
Mr Vincent McLenaghan, Chairman, International General Insurance Committee

Reserve Bank of Australia
Mr Ric Battellino, Assistant Governor, Financial Markets
Dr Robert Rankin, Head of International Department

Finance and Treasury Association
Mr Anthony Michell, Technical Manager, Policy, Research and Professional Development

Australian Banking Industry Ombudsman
Mr Colin Neave, Banking Ombudsman

J B Were & Son
Mr Terrence Campbell, Executive Chairman

Ms Priscilla Boreham, Corporate Counsel
Ms Lisa Gay, General Counsel

Australian Securities and Investment Commission
Mr Alan Cameron, Chairman
Ms Delia Rickard, Director, Office of Consumer Protection
Ms Jillian Segal, Commissioner
Mr Shane Tregillis, National Director Regulation

Australian Accounting Standards Board
Mr Keith Alfredson, Chairman

Thursday, 15 June 2000, Melbourne

Australian Council of Trade Unions
Ms Linda Rubinstein, Senior Industrial Officer

Industry Funds Forum
Ms Ann Byrne, Convenor
Ms Anne-Marie Darke, Executive Member

Corporate Super Association
Mr Mark Cerche, Chairman
Mr Nicholas Brookes, Secretary

Institute of Chartered Accountants of Australia
Mr David Coogan, Chairperson, Superannuation Taskforce
Mr Richard Rassi, Partner Deloitte Touche Tohmatsu

William M Mercer Pty Ltd
Mr Wayne Walker, Executive Director
Mr John Ward, Manager, Research and Information

Ms Fiona Ogilvy-O'Donnell

Towers Perrin
Mr Kenneth Lockery, Principal

CPA Australia
Mr Bradley Pragnell, Superannuation Policy Adviser

Association of Independent Retirees Inc
Mr Alan Beaton, President, South Australian Division and National Councillor

Friday, 16 June, 2000, Brisbane

Puzzle Finance Advice Pty Ltd
Mr Bruce Baker, Director
Mr Gary Lanham
Mr Mervyn Whimp

Hairdressers Association Superannuation Fund
Mrs Yvonne Bell, Consultant to Fund
Mr Jeffrey Osborne, Director (Trustee Company)

Mrs Carmel Reading

Law Employees Superannuation Fund
Mr Peter Short, Chairman
Mr Ray Rinaudo, Director

Voyager Resort Ltd
Mr Geoff Heaton, Company Secretary and Resort Manager

Mr Dan Scheiwe

Mr Paul Henderson

Friday, 14 July, 2000, Canberra

Australian National University
Prof Peter Drysdale, Head Australia-Japan Research Centre and Acting Director Asia Pacific School of Economics and Management
Prof Anthony Milner, Dean, Faculty of Asian Studies

The National Office for the Information Economy, Department of Communications, Information, Technology and the Arts

Dr Rodney Badger, Deputy Chief Executive Officer NOIE and Executive Director Information Technology
Mr Phillip Malone, Acting General Manager, E-Commerce
Mr Gregory Piko, Acting General Manager, Information and Communications Industry Development
Mr Brenton Thomas, Acting General Manager, Consumer and Competition Branch

Namoi Cotton Cooperative (teleconference)
Mr Andrew Lennon, Risk Manager

The Broken Hill Proprietary Co Ltd (teleconference)
Mr Ian Edney, Vice President Taxes
Mr Alistair Mytton, Manager, Corporate Tax Advisory

Australian Principals' Centre
Mr Nicholas Thornton, Chief Executive Officer

Australian Greenhouse Office
Dr David Harrison, Special Adviser, Emission Trading
Dr Gary Richards, Manager, National Carbon Accounting System
Mr Stephen Moran, Director, Climate Section, Department of Foreign Affairs and Trade

Securities Institute of Australia
Ms Penelope Le Couteur, Managing Director
Mr Darren Davis, National Policy Adviser

Department of the Treasury
Mr Blair Comley, General Manager, Indirect Tax Division
Mr Bruce Paine, General Manager, Business Entitics and International Tax Division
Mr Gary Potts, Executive Director, Markets Group
Mr Michael Willcock, General Manager, Financial Markets Division
Mr Leslie Hosking, Chief Executive Officer, Axiss Australia

Australian Taxation Office
Mr James Killaly, Deputy Commissioner, Large Business and International

Friday, 1 September 2000, Canberra

Australian National Audit Office
Mr Peter White, Executive Director, Revenue Branch
Mr Norman Grimmond, Senior Auditor Performance Audit Services Group

Financial Planning Association of Australia
Mr Con Hristodoulidis, Senior Manager, Public Policy
Mr Maurice Pinto, Chairperson, Superannuation and Retirement Incomes Committee

Australian Consumers Association
Ms Louise Petschler, Senior Policy Officer, Financial Services

Australian Taxation Office
Mr David Diment, Assistant Commissioner, Superannuation

Institute of Actuaries of Australia
Dr David Knox, President
Ms Jane Ferguson, Director Public Affairs
Ms Christa Marjoribanks, Member, General Insurance Practice Committee

Australian Institute of Criminology
Dr Adam Graycar, Director
Dr Peter Grabosky, Director of Research

WA Shearing Contractors Association (teleconference)
Mr Neville Munns, Secretary

Monday, 16 October 2000, Canberra

Care Incorporated
Mr David Tennant, Director

National Farmers Federation
Mr Richard Calver, Director, Industrial Relations

Australian Association of Permanent Building Societies
Mr Jim Freemantle, Chairman
Mr Jim Larkey, Executive Director

First Samuel Ltd
Mr Anthony Starkins, Managing Director

Association of Financial Advisers
Mr John Hibberd, President
Mr Dugald Mitchell, Consultant

Tuesday, 17 October 2000, Canberra

Australian Securities and Investments Commission
Mr Sean Hughes, Director, Deposits, Investment, Superannuation and Consumers
Mr Peter Kell, Coordinator, Office of Consumer Protection
Ms Angela Longo, Senior Lawyer
Ms Delia Rickard, Office of Consumer Protection
Mr Malcolm Rodgers, Director, Regulatory Policy

Australian Prudential Regulation Authority
Mr Roger Brown, Senior Manager, Rehabilitation and Enforcement
Mr Keith Chapman, General Manager, Specialised Institutions Division
Mr Leslie Phelps, Executive General Manager, Specialised Institutions Division
Mr Darryl Roberts, General Manager, Policy Development and Statistics

Department of the Treasury
Mr Roger Brake, General Manager, Retirement and Personal Income Division
Mr Raphael Cicchini, Manager, Superannuation Unit, Retirement and Personal Income Division

Ms Jan Harris, General Manager, Consumer Affairs Division
Mr William Keown, Acting General Manager, Financial Institutions Division
Mr David Maher, Analyst, Financial Institutions Division
Mr Michael Rosser, Manager, Investor Protection Unit, Financial Markets Division
Ms Karen Witham, Manager, Superannuation and Insurance Unit, Financial Institutions Division
Mr Michael Willcock, General Manager, Financial Markets Division

Australian Taxation Office
Mr Leo Bator, Deputy Commissioner of Taxation
Mr David Diment, Assistant Commissioner of Taxation

Australian Competition and Consumer Commission
Mr Allan Asher, Deputy Chairman
Mr Carl Buik, Director, Consumer Protection

Friday, 30 March 2001, Canberra

Mr Spencer Bell (private capacity)

Mr John Crosby (private capacity)

Saxby Bridge Financial Planning Pty Ltd
Mr Phillip Dally, General Manager

Mrs Marianne Gregg (private capacity)

Mr Richard Kaan (private capacity)

Mrs Jennifer Kaan (private capacity)

Mrs Valda Marshall (private capacity)

Mr Eric Watts (private capacity)

Friday, 18 May 2001, Hobart

Department of Justice and Industrial Relations
Mr Peter Maloney, Director, Legislation of Policy

Mr Leon Morrell (private capacity)
Mr Allan Oldham (private capacity)
Mrs Mary Oldham (private capacity)

The Hon Ray Groom, Shadow Minister for Justice (Tas)

Law Society of Tasmania
Mr Timothy Bugg, Past President
Ms Christine Harvey, Deputy Secretary-General, Law Council of Australia
Mr Philip Jackson, President
Mrs Jan Martin, Executive Director

Toomey Maning and Company
Mr Patrick Toomey

Ms Cherylyn Harris (private capacity)
Ms June Schott (private capacity)
Mr Arnold Sierink (private capacity)
Mrs Maureen Sierink (private capacity)

Mr John Meyer (private capacity)
Mr John Woods, Official Liquidator of D W & I M Tapping Pty Ltd

Mr John Fyle (private capacity)
Mr David Newitt (private capacity)
Mrs Melba Truchanas (private capacity)

Tasmanian Ombudsman
Mr Anthony Allingham, Senior Investigation Officer

Garrisons Pty Ltd
Mr Philip Creswell, National Audit and Compliance Manager, and Company Secretary
Mr John Sikkema, Managing Director
Mr Michael Spinks, Executive Director

Mr Peter Worrall, Manager, Lewis Driscoll and Bull

Mr Peter Joyce, Manager, McCulloch and McCulloch

Mr John McCausland, Editor *The Mercury* and *The Sunday Tasmanian*

Tuesday, 12 June 2001, Sydney

PricewaterhouseCoopers
Mr Peter Hedge, Partner

Australian Stock Exchange
Ms Luise Elsing, Manager, Companies, Sydney
Mrs Karen Hamilton, General Counsel and Company Secretary

Australian Securities and Investments Commission
Mr Simon Dwyer, Regional Commissioner
Mr Michael Gething, Western Australian Regional Commissioner
Mr Ian Johnston, Executive Director, Financial Services Regulation
Mr David Knott, Chairman
Mr Ian Mackintosh, Chief Accountant
Mr Darren McShane, Director, Managed Investments
Ms Jan Redfern, Regional General Counsel
Ms Jillian Segal, Deputy Chair
Mr Shane Tregillis, Executive Director, Policy and Markets Regulation
Mr Peter Wood, Executive Director, Enforcement

Australian Prudential Regulation Authority
Mr Earl Burgess, Senior Manager, Rehabilitation and Enforcement
Mr Bill Gole, General Manager, Coordination, Rehabilitation and Enforcement
Mr Thomas Karp, Executive General Manager, Diversified Institutions
Mr Leslie Phelps, Executive General Manager, Specialised Institutions Division
Mr William Stow, Manager (Legal), Rehabilitation and Enforcement, Specialised Institutions Division
Mr Craig Thorburn, General Manager, Diversified Institutions Division

Friday, 15 June 2001, Hobart

Mr Cyril Clark (private capacity)
Mr Sydney Dwyer (private capacity)

Law Society of Tasmania
Mr Timothy Bugg, Past President and Council Member
Mr Philip Jackson, President
Mrs Jan Martin, Executive Director
Ms Christine Harvey, Deputy Secretary-General

Australian Property Institute
Mr Louis Rae, Chairman, Valuers Registration Board
Mr Raymond Westwood, Chairman, Complaints Commission; Board Member, Australian Valuation and Property Standards Board; and Tasmanian Divisional Chairman, Australian Property Institute

Mr Paul Wilson, Tasmanian Divisional President, Australian Property Institute

Ms Judith Paxton, Tasmanian Legal Ombudsman

Mr Bernard Harrington, Retirement Manager, Centrelink

Monday, 25 June 2001, Canberra

Australian Prudential Regulation Authority

Mr Earl Burgess, Senior Manager, Specialised Institutions Division
Mr Les Phelps, Executive General Manager, Specialised Institutions
Mr William Stow, Manager, Specialised Institutions Division
Mr Graeme Thompson, Chief Executive Officer

(Hansard transcripts of the nine hearings held in 2000 were tabled on 22 March 2001 when the Committee presented its report on term of reference (b) - *The opportunities and constraints for Australia to become a centre for the provision of global financial services.* Hansard transcripts of the five hearings held by the end of June 2001 were tabled when the Committee presented its First Report on term of reference (a) - *Prudential Supervision and Consumer Protection for Superannuation, Banking and Financial Services.*)

APPENDIX 9

TABLED DOCUMENTS/EXHIBITS

1. ASFA submission on Financial Services Reform Bill. May 2000 – tabled by Ms Philippa Smith, CEO, ASFA, 15 May 2000, Sydney.

2. Correspondence from Hesta Super Fund to Barry Terzic, AMWU, dated 12 May 2000 relating to Superannuation – Process Pack – tabled by Mr Barry Terzic, National Research Officer, AMWU, 15 May 2000, Sydney.

3. Extract from Workplace Relations Act 1996 – tabled by Mr Barry Terzic, National Research Officer, AMWU, 15 May 200, Sydney.

4. Correspondence to APRA, dated 20 August 1999 and correspondence from APRA, dated 9 September 1999 relating to monitoring gainful employment for members over age 65 – tabled by Ms Lynn Ralph, CEO, IFSA, 15 May 2000, Sydney.

5. Opening statement by Mr Les Hosking, Chief Executive Officer, Australian Centre for Global Finance and fact sheets about the Centre – tabled by Mr Les Hosking, CEO, Australian Centre for Global Finance, 16 May 2000, Sydney.

6. *AFMA 1999 Australian Financial Markets Report – Overview* – tabled by Mr Kenton Farrow, Chief Executive, Australian Financial Markets Association, 16 May 2000, Sydney.

7. *IBSA 1999 Annual Report* – tabled by Mr Robert Webster, Executive Director, International Banks and Securities Association of Australia, 16 May 2000, Sydney.

8. *'Disclosure Model'* – tabled by Ms Ann Byrne, Convenor, Industry Funds Forum, 15 June 2000, Melbourne.

9. The following documents, issued by the Queensland Department of Justice and Attorney-General were tabled by Mr Baker, Puzzle Financial Advice Pty Ltd, 16 June 2000, Brisbane:

   - Enduring Power of Attorney
   - Powers of Attorney Act 1998
   - Advance Health Directive
   - Statutory Health Attorney
   - Enduring Power of Attorney – long form.

10. *Law Employees Superannuation Fund (LESF), Annual Report to Members for the year ending 30 June 1999* – tabled by Ms Carmel Reading, 16 June 2000, Brisbane.

11. A document issued by the Hotel Motel & Accommodation Association of Queensland entitled ' Important notice to members – EPAS superannuation 28/9/98' – tabled by Mr Geoff Heaton, 16 June 2000, Brisbane.

12. Report prepared for ASIC by Phillips Fox Actuaries and Consultants, *Financial Products and Intermediary Remuneration,* 10 November 1999 – provided by ASIC in response to questions taken on notice at the public hearing in Melbourne on 9 June 2000.

13. A document entitled, 'An IOSCO Technical Committee Release: International Securities Regulators Issue New Economy Bulletin, Sydney Australia 19 May 2000', provided by ASIC in response to questions taken on notice at the public hearing on 9 June 2000.

14. Response by Ms Yvonne Bell, Hairdressers Association Superannuation Fund, to questions taken on notice at the public hearing in Brisbane on 16 June 2000, relating to names of trustees and the court involved.

15. A document entitled, 'National Bandwidth Inquiry – Report of the Australian Information Economy Advisory Council', provided by National Office of Information Economy in response to questions asked at the public hearing on 14 July 2000.

16. Four discussion papers, 'Establishing the Boundaries', 'Issuing the Permits', 'Crediting the Carbon' and 'Designing the Market', provided by the Australian Greenhouse Office in response to questions asked at the public hearing on 14 July 2000.

17. Final Report from the Centre for International Economics Canberra and Sydney, which was commissioned by the Australian Greenhouse Office, provided by the Australian Greenhouse Office in response to questions asked at the public hearing on 14 July 2000.

18. Australian Institute of Criminology brochure outlining the Institute's function, aims and programs, tabled by Dr Adam Graycar, Director, at the committee's public hearing on 1 September 2000.

19. Australian Institute of Criminology brochure No. 56 - *Superannuation Crime* - tabled by Dr Adam Graycar, Director, at the committee's public hearing on 1 September 2000.

20. Australian Institute of Criminology brochure No. 132 - *Fraud & Financial Abuse of Older Persons* - tabled by Dr Adam Graycar, Director, at the committee's public hearing on 1 September 2000.

21. Australian Institute of Criminology brochure No. 139 - *Substitute Decision Making and Older People* - tabled by Dr Adam Graycar, Director, at the committee's public hearing on 1 September 2000.

22. Chant Links & Associates, 1*999 Superannuation Guarantee Audit Summary Report*, provided by the Australian Taxation Office and received as an exhibit to the inquiry on 3 October 2000.

23. Brochure entitled *Code of Ethics & Rules of Professional Conduct*, provided by the Financial Planning Association and received as an exhibit to the inquiry on 3 October 2000.

24. National Farmers' Federation publication Reform, Spring 2000, provided by Mr Richard Calver, NFF, during the public hearing on 16 October 2000.

25. Article entitled Disclosure paper on the current commission disclosure issue in Australia, provided by Mr John Hibberd, Association of Financial Advisers at the public hearing on 16 October 2000.

26. Policy/discussion paper entitled Distribution Disclosure or Commission? Bias and Conflict of Interest Examined, provided by Mr John Hibberd, Association of Financial Advisers at the public hearing on 16 October 2000.

27. Australian Competition and Consumer Commission - Overview of consumer protection functions, October 2000, tabled by Mr Allan Asher, ACCC, at the public hearing on 17 October 2000.

28. Approval of external complaints resolution schemes, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.

29. A User's Guide to ASIC, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.

30. ASIC more than a corporate watchdog, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.

31. Educating Financial Services Consumers, discussion paper tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.

32. Submission to the Review of the Code of Banking Practice, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.

33. Submission to the Parliamentary Joint Committee on Corporations and Securities inquiry into fees on electronic and telephone banking, tabled by the Australian Securities and Investments Commission at the public hearing on 17 October 2000.

34. Documents provided by the ACCC in response to questions taken on notice at the public hearing on 17 October 2000.

- *Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance* for the period ending 30 June 2000;
- *Debit and credit card schemes in Australia. A study of interchange fees and access*. Reserve Bank of Australia, Australian Competition and Consumer Commission, October 2000;
- ACCC submissions – First, Second and Third - to the Financial System Inquiry (Wallis Inquiry) 1996 and 1997.

35. Extract from Hobart Council minutes of 4 February 1990 on Trust Account Inspections - tabled by Mr C E Clark on 15 June 2001 in Hobart.

36. Extract from Minutes of a Meeting of the Executive Committee held at Hobart on Monday, 28th May 1990 at 1.00 pm - tabled by Mr Jackson, Law Society of Tasmania, on 15 June 2001 in Hobart.

37. Memorandum from the Legal Ombudsman, Tasmania to Legal Profession Act Review at the Department of Justice and Industrial Relations, Hobart dated 1 September 2000 - tabled by Ms Judith Paxton, Legal Ombudsman on 15 June 2001 in Hobart.

38. Legal Ombudsman Annual Report for 1 January to 31 December 2000 and covering letter to the Hon P. J. Patmore, MHA, Attorney-General, Tasmania - tabled by Ms Judith Paxton, Legal Ombudsman on 15 June 2001 in Hobart.

39. Legal Ombudsman Annual Report for the year ended 31 December 1999 - tabled by Ms Judith Paxton, Legal Ombudsman on 15 June 2001 in Hobart.

APPENDIX 10

LIST OF COMMITTEE REPORTS

Reports of the Select Committee on Superannuation

(1991-1998)

- *Super System Survey* - A Background Paper on Retirement Income Arrangements in Twenty-one Countries (December 1991)
- Papers relating to the Byrnwood Ltd, WA Superannuation Scheme (March 1992) Interim Report on Fees, Charges and Commissions in the Life Insurance Industry (June 1992)
- First Report of the Senate Select Committee on Superannuation - *Safeguarding Super* - the Regulation of Superannuation (June 1992)
- Second Report of the Senate Select Committee on Superannuation - *Super Guarantee Bills* (June 1992)
- *Super Charges* - An Issues Paper on Fees, Commissions, Charges and Disclosure in the Superannuation Industry (August 1992)
- Third Report of the Senate Select Committee on Superannuation - *Super and the Financial System* (October 1992)
- *Proceedings of the Super Consumer Seminar*, 4 November 1992 (4 November 1992)
- Fourth Report of the Senate Select Committee on Superannuation - *Super - Fiscal and Social Links* (December 1992)
- Fifth Report of the Senate Select Committee on Superannuation - *Super Supervisory Levy* (May 1993)
- Sixth Report of the Senate Select Committee on Superannuation - *Super - Fees, Charges and Commissions* (June 1993)
- Seventh Report of the Senate Select Committee on Superannuation - *Super Inquiry Overview* (June 1993)
- Eighth Report of the Senate Select Committee on Superannuation - *Inquiry into the Queensland Professional Officers Association Superannuation Fund* (August 1993)

- Ninth Report of the Senate Select Committee on Superannuation - *Super Supervision Bills* (October 1993)
- Tenth Report of the Senate Select Committee on Superannuation - *Super Complaints Tribunal* (December 1993)
- Eleventh Report of the Senate Select Committee on Superannuation - *Privilege Matter Involving Mr Kevin Lindeberg and Mr Des O'Neill* (December 1993)
- A Preliminary Paper Prepared by the Senate Select Committee on Superannuation for the Minister for Social Security, *Options for Allocated Pensions Within the Retirement Incomes System* (March 1994)
- Twelfth Report of the Senate Select Committee on Superannuation - *Super for Housing* (May 1994)
- Thirteenth Report of the Senate Select Committee on Superannuation - *Super Regs I* (August 1994)
- Fourteenth Report of the Senate Select Committee on Superannuation - *Super Regs II* (November 1994)
- Fifteenth Report of the Senate Select Committee on Superannuation - *Super Guarantee - Its Track Record* (February 1995)
- Sixteenth Report of the Senate Select Committee on Superannuation - *Allocated Pensions* (June 1995)
- Seventeenth Report of the Senate Select Committee on Superannuation - *Super and Broken Work Patterns* (November 1995)
- Eighteenth Report of the Senate Select Committee on Superannuation - *Review of the Superannuation Complaints Tribunal* (April 1996)
- Nineteenth Report of the Senate Select Committee on Superannuation - *Reserve Bank Officers' Super Fund* (June 1996)
- Twentieth Report of the Senate Select Committee on Superannuation - *Provisions of the Social Security Legislation Amendment (Further Budget and Other Measures) Bill 1996 - Schedule 1* (November 1996)
- Twenty-first Report of the Senate Select Committee on Superannuation - *Investment of Australia's Superannuation Savings* (December 1996)
- Twenty-second Report of the Senate Select Committee on Superannuation - *Retirement Savings Accounts Legislation* (March 1997)
- Twenty-third Report of the Senate Select Committee on Superannuation - *Superannuation Surcharge Legislation* (March 1997)

- Twenty-fourth Report of the Senate Select Committee on Superannuation - *Schedules 1, 9 & 10 of Taxation Laws Amendment Bill (No. 3) 1997* (June 1997)

- Twenty-fifth Report of the Senate Select Committee on Superannuation - *The Parliamentary Contributory Superannuation Scheme & the Judges' Pension Scheme* (September 1997)

- Twenty-sixth Report of the Senate Select Committee on Superannuation - *Super - Restrictions on Early Access: Small Superannuation Accounts Amendment Bill 1997 and related terms of reference.* (September 1997)

- Twenty-seventh Report of the Senate Select Committee on Superannuation - *Superannuation Contributions Tax Amendment Bills.* (November 1997)

- *Super Taxing* - An information paper on the Taxation of Superannuation and related matters. (February 1998)

- Twenty-eighth Report of the Senate Select Committee on Superannuation – *Choice of Fund*. (March 1998)

- Twenty-ninth Report of the Senate Select Committee on Superannuation - *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1997, Commonwealth Superannuation Board Bill 1997, Superannuation Legislation (Commonwealth Employment - Saving and Transitional Provisions) Bill 1997.* (April 1998)

- Thirtieth Report of the Senate Select Committee on Superannuation - *Workplace Relations Amendment (Superannuation) Bill 1997*. (May 1998)

- Thirty-first Report of the Senate Select Committee on Superannuation - *Resolving Superannuation Complaints* - options for dispute resolution following the Federal Court decision in *Wilkinson v CARE*. (July 1998)

Reports of the Select Committee on Superannuation and Financial Services

(1999 - 2001)

- *Choice of Superannuation Funds (Consumer Protection) Bill 1999* (November 1999)
- *Superannuation Legislation Amendment Bill (No. 4) 1999* (November 1999)
- *Roundtable on Choice of Superannuation Funds* (March 2000)
- *Provisions of the Superannuation (Entitlements of Same Sex Couples) Bill 2000* (April 2000)
- *New Business Tax System (Miscellaneous) Bill No 2 2000* (June 2000)
- *Financial Sector Legislation Amendment Bill (No 1) 2000* (August 2000)
- *Interim report on the Family Law Legislation Amendment (Superannuation) Bill 2000* (November 2000)
- *Taxation Laws Amendment (Superannuation Contributions) Bill 2000* (December 2000)
- *Family Law Legislation Amendment (Superannuation) Bill 2000* (March 2001)
- *The opportunities and constraints for Australia to become a centre for the provision of global financial services* (March 2001)
- *A 'reasonable and secure' retirement? The benefit design of Commonwealth public sector and defence force unfunded superannuation funds and schemes* (April 2001)
- *Enforcement of the Superannuation Guarantee Charge* (April 2001)
- *Issues arising from the Committee's report on the Taxation Laws Amendment (Superannuation Contributions) Bill 2000* (May 2001)
- *Report on the Provisions of the Parliamentary (Choice of Superannuation) Bill 2001* (August 2001)
- *Prudential supervision and consumer protection for superannuation, banking and financial services - First Report* (August 2001)