

# ACTEK SUPERANNUATION PTY LTD atf ACTEK SUPERANNUATION FUND

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Statutory Compensation Review  
Future of Financial Advice  
P.O.Box 6295  
KINGSTON ACT 2604

## **Submission to the Statutory Compensation Review (Future of Financial Advice)**

This submission is made by ACTEK SUPERANNUATION PTY LTD atf ACTEK SUPERANNUATION FUND in response to the Consultation Paper prepared by Richard St John, April 2011.

### **BACKGROUND.**

The attached copy of our original complaint to ASIC explains the details of our loss of almost \$.1.4 million (plus lost earnings since) representing almost our entire Superannuation Funds and the life savings of my wife and I now aged 77 and 80 years.

Starting with no money, no home ,no car and few possessions we have worked extremely hard until my retirement at 76 years when we sold our business. We have lost all the funds from the sale and now mainly exist by spending what little capital remains. Our life aim was never to have to rely on the pension. We have minimal income and are now hoping for a successful application for at least a part pension.

We are members of the ARP Unitholders Inc and endorse the Association submission to you dated 22<sup>nd</sup> May 2011.

We also submit the following additional comments :-

### **1) PROTECTION VIA COMPULSORY INSURANCE COVER.**

Section D of the ARP Association submission recommends the establishment of a statutory compensation scheme which also extends to SMSFs. In support of this we make the following suggestion.

#### **SUGGESTION.**

It is clear that current Professional Indemnity insurance requirements are totally inadequate and doubtful that PI insurance alone can protect sufficiently as it is not a catch-all scheme. So could an insurance style cover be created to protect SMSFs which either incorporates Financial Planners' and RE's PI Insurance or is in addition to such Insurance ?

It is acceptable practise in Australia that one can insure against just about everything so could the Minister the Hon. Bill Shorten introduce a scheme where every SMSF has to contribute to a joint insurance against loss through neglect, lack of duty of care, misleading information AND including fraud ? Financial advisers, RE's etc could also be required to contribute to the insurance premium and because Government has a regulation responsibility they should either contribute to the policy premium or share some of the risk by a contribution to any compensation to SMSFs in the LIKELY event of a TRIO or WESTPOINT style collapse occurring again ( see attached SMH Business Day opinion piece by Stuart Washington 27/5/11 ). The Hon Bill Shorten also expects future losses stating in April 14 "crooks & thieves & charlatans will always be out there"

A deal could be done with an insurer on behalf of ALL participants which should achieve a much lower bulk premium than if SMSFs negotiated individually. Given the billions of dollars in SMSF funds the percentage of the total should be acceptably small. We feel sure an actuary or insurer could present a possible plan.

Some SMSFs have already spoken out against an SMSF levy similar to that in place for APRA supervised funds. If the complainers had experienced the magnitude of losses as experienced by ARP Growth Unitholders we feel sure they would agree with our proposal.

The large Super funds regulated by APRA and their members probably did not like to pay the Super Compensation Levy and we suggest many Members in APRA supervised funds would not realise that their funds have to pay such a levy and that it is obviously part of their costs which obviously are shared amongst all members ! So too a scheme such as we propose would be shared amongst ALL SMSFs.

SMSFs would pay a percentage (to be arrived at by actuaries) of their total funds as at 30<sup>th</sup> June each year as insurance against any kind of collapse and so avoid any future devastation like TRIO. It could be a separate amount to the (now) \$180 pa we pay annually.

It is noteworthy that it is compulsory for a home buyer who pays a deposit under a prescribed amount is required to take out insurance against poor health or job loss. So too compulsory SMSF Insurance against loss would protect all.

An alternative could be that SMSFs could opt IN or opt OUT of such a scheme ?

## **2) BAN SOME INDEMNITY INSURANCE EXCLUSIONS, STANDARDISE & CLARIFY.**

Currently Financial organisation can have indemnity insurance with various exclusions. A common exclusion is fraud. Why shouldn't advisers etc be forced to insure against fraud ? The current levels of Indemnity Insurance are far too low eg only \$5 million for our Financial Adviser handling investments of over \$55 million.

## **3) ACCOUNTABILITY OF FINANCIAL & RISK AUDITORS AND COMPLIANCE AUDITORS**

We studied the WHK Audit & Risk report as at 30<sup>th</sup> June 2008 which, as is usual, was distributed some months later. The risk report was glowing. Anyone studying it would feel ARP investments were secure. The KPMG Compliance Report was also positive and reassuring. Yet **less than 12 months later** neither WHK, KPMG, ASIC, APRA and later the liquidators PPB could trace the almost \$200 million missing and it is believed the funds at time of collapse were in the same place as they were at 30<sup>th</sup> June 2008. This begs the question "Why have Auditors ?"

With regard to Compliance Justice George Palmer in the NSW Supreme Court was highly critical of the Product Disclosure Statement saying that it did not comply, was misleading and would be difficult for investors to properly understand where funds were to go. He described the case as "scandalous fraud" So "why have a Compliance Auditor when, in this case, they allegedly did not even ensure the PDS was compliant ?" Nor did ASIC !

Furthermore how did the PDS get through ASIC scrutiny - or is there insufficient scrutiny ?

Some commentators have been highly critical of SMSF Trustees who invested in the ARP Fund - saying "they should not have invested in such risky investments". Many of our Unitholders previously held quite high positions in Public Companies such as Company Secretary and one remains Chairman of a well known Public Company. In my case my background is not in accounting but I have been Managing Director of the Australian companies in a London based Group and later commenced my own very successful company. Most of us were with the same Financial Adviser enjoying excellent results for over 20 years. We read the Audit & Risk & Compliance reports, APRA or ASIC investigated

Shawn Richards (who has pleaded guilty and to be sentenced to jail) in around 2005/2006 and allowed his license to continue despite questionable qualifications.

As Government has the regulation responsibilities and in the case of ARP GROWTH FUND failed us then they should find a way to get at least some of our funds back. They should ENSURE ASIC and/or APRA sues the guilty parties including Directors, WHK & KPMG under s50 of the Australian Securities and Investment Commission Act 2001 to recover funds from them and/or their Indemnity Insurance Policies.

Alternatively they should make a special compensation payment to Unitholders because all 4 organisations ASIC, APRA, WHK, KPMG failed their duty of care to us. ASIC has said that as there are very little funds in indemnity insurance of Directors etc it is not worthwhile to sue. **BUT WHAT ABOUT WHK & KPMG ???!** They have deeper pockets and it would appear certain they also failed in their duty of care. PPB's liquidator's report commented on this.

To ensure the public continues to feel safe investing in Superannuation, ASIC should always commence recovery actions against all the guilty parties. Also Auditors surely must be held accountable.

It would appear also that ASIC needs significantly more funding as White collar crime is harder to detect and is growing. Improvement in Regulation, Supervision and Auditing is overdue and should be addressed in your Review.

#### **4) PUBLIC INTEREST**

It is most disturbing that ASIC has said that it may not be in the Public Interest to take civil action against alleged guilty parties in the TRIO collapse. Your Review should address the question of "Public Interest". When is it in the Public Interest and when is it not ?! Why is ASIC action in the Westpoint and Storm collapses in the public interest and the TRIO collapse is not ?

Surely this is illogical and totally unfair to TRIO investors !

If it is a question of available ASIC resources then ASIC should be given more resources

#### **5) SMSFs DESERVE SAME COMPENSATION AS APRA REGULATED FUND INVESTORS**

It has been said that SMSFs are "sophisticated" investors when clearly this is not so. Most are retirees and small business owners etc whose "sophistication" as investors are at a similar level to those who invest in APRA regulated Funds. However even sophisticated investors would feel it reasonable to place trust in a Fund which not only had positive audits but was apparently also considered safe by the regulators.

The generally held view is that the current compensation under Part 23 of SIS to APRA regulated fund investors and not to ASIC regulated fund SMSF investors is poor public policy, unsustainable and clearly has no logical or moral basis.

Government legislation should fix this anomaly in the public interest for the future

**It is in the government's interests to develop an all-embracing scheme because when such failures occur Government is faced with increased pension payments !**

As ARP investor losses are largely due to failures in industry regulation special compensation to SMSFs is warranted in the TRIO instance as a "top-up" on any recovery of funds in actions against guilty parties. Alternatively the Government could compensate us retrospectively as recognition that we were let down by the Government regulators.

**ACTEK SUPERANNUATION PTY LTD atf ACTEK SUPERANNUATION FUND**

Roy Douglas Fowler  
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Encl.

Complaint to ASIC  
Stuart Washington article  
ARP Growth Fund Survey