CHAPTER 2
CONSUMER CASE STUDIES

In practice, unrestrained competition will not always produce the best possible economic and social outcomes. Some markets have impediments which tend to distance the competitive process and these investment, consumption and production choices. In those cases, market failure is said to occur.[4]

2.1 The following material was received as evidence by the Committee from consumers who had experienced difficulties in transacting business with providers of superannuation plans. The case studies are a representative cross-section of a large number of consumer complaints received by the Committee which were a high proportion of total submissions (see Appendix B).

2.2 These case studies illustrate the unequal bargaining power which exists between consumers and providers in the personal superannuation industry and demonstrate that reliable and accurate information on all material aspects of each product has often been sadly lacking. These are themes which frequently arise in this report and underpin a number of the recommendations of the Committee.

Mr N Renton and Westpac

Submission No 8

2.3 Mr Renton claimed that Westpac breached a contract by imposing a new fee midstream during a policy, despite promoting the fund on the basis that members would not be subject to charges bar the ones stated in its prospectus. While conceding that the money involved was 'minuscule', Mr Renton took umbrage at the principle involved in so far as this unilateral

[4] Op cit, Trade Practices Commission, p 77.

action could open the way for Westpac to impose any level of new fee at whim: 'Why stop at $10 per half-year? What is to stop the Bank of its own volition charging $100 or $1 000'. Mr Renton believed that the Bank's failure to consult policy holders prior to the charge and its about face on the prospectus statement, were both illegal acts.

2.4 Furthermore, Mr Renton's protest was met with a response from the bank that dissatisfied customers could take their business elsewhere. Mr Renton asserted that this left him short-changed because of the impact of the new fee on his contributions.

2.5 Westpac responded in the following way:

> Following a further review of your file, we have re-instated your benefit to 96.461 units. Future management fees of $10.00 per half year will also be waived.
>
> We have reached this decision because of the unique nature of the timing, and your method of entry, into this Fund via Employees Provident Fund.
>
> Would you please acknowledge your satisfaction with this arrangement, on the duplicate of this letter.[5]

Mr D Schwarz and Capita/MLC

Submission No 17

2.6 Mr Schwarz claimed that Capita (which was subsequently taken over by MLC) provided misleading information with respect to the surrender value of his policy. On taking out the policy, Mr Schwarz submitted he was advised that when members elect to leave a fund 'you [members] may have 91 per cent of the value of the funds held immediately, or you may have 100 per cent of your funds paid back over two years in monthly instalments – during this two year period, you receive a fund earning rate three per cent less than [what] continuing members receive'. This discounted rate of return is in addition to normal fees and expenses deducted from members' funds over the two year period.

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[5] Letter to Mr Renton of 22 July 1992

2.7 Mr Schwarz's specific complaint was not so much over the penalty surrender rate for early withdrawal, but relate to the advice he received from MLC when joining the fund. He claimed to have been advised that only in exceptional circumstances is the penalty surrender rate imposed. However, Mr Schwarz was subject to this penalty surrender rate when he withdrew his investment. He claimed also to have met a 'bureaucratic brick wall' when he attempted to obtain an explanation from MLC as to the circumstances resulting in the penalty rate.

2.8 It should be noted that the Capita/MLC promotional information submitted by Mr Schwarz was explicit regarding early surrender values but was vague regarding the 'exceptional circumstances' mitigating the surrender rate. Capita/MLC stated that surrender values 'may be less than the total of premiums paid'. It also stated that 'Capita would only implement these conditions [that is, the penalty surrender rate] when it considers such action necessary or desirable in respect to the interests of all policy holders in No. 1 Fund generally'. Under ISC Circulars 276 and 290 [clause 4.2(d)], it is necessary for the circumstances giving rise to the imposition of the surrender rate to be spelt out with clarity.

2.9 MLC's reply stated that the marketing material said nothing about 'exceptional circumstances' and that 'Capita would only implement these conditions when it considers such action necessary or desirable in respect to the interests of all policy holders in the No. 1 Fund generally.'

2.10 MLC further stated that the settlement conditions referred to by Mr Schwarz had nothing to do with agent commission and were closely designed 'to reflect the underlying assets during the period of the investment.'[6]

Mr G Hearn and MLC Life

Submission No 24

2.11 Mr Hearn was forced into early retirement due to invalidity. Since he was ineligible at his age for the retirement pension, he and his wife were dependent on the returns of his superannuation investments and his wife's income. Mr Hearn's early retirement meant he had to transfer his

[6] MLC letter to the Committee dated 22 July 1992.

superannuation policy into a rollover fund. In addition to taxes, Mr Hearn incurred a five per cent commission charge of $10 000. As he will be obliged to transfer this superannuation investment at age 65, he feared he will be faced with similar charges again.

2.12 Because Mr Hearn's invalidity required his wife to nurse him, Mrs Hearn has been forced to work only part-time. This has resulted in her inability to pay the premium on her own personal superannuation policy. The arrears on her premium payments have incurred 14 per cent penalty charges, the cumulative effect of which will whittle away all her contributions within ten years. While the Hearns conceded Mrs Hearn's policy statement made reference to this penalty charge, they have expressed grievance with the agent who sold the policy for not alerting them to it. Compounding the Hearns' grievance was the life insurance company's response to their inquiries being relayed via the agent who sold the policy, despite the agent's conduct being a subject of their complaint.

2.13 Mr Hearn also alleged that one of his sons was sold a life insurance policy by an agent on the basis of misleading information. The sales agent was said to have exaggerated the benefits generated by the policy by extrapolating the fund's gross annual performance rate over the policy lifespan without taking account of charges, tax and likely inflation. Coupled with this 'sales hype' was the obscure and complex language and jargon used by the agent and the company's promotional material.

2.14 Subsequent to the Committee secretariat conveying Mr Hearn's allegations to the company now administering the above mentioned policies, the Committee was advised that:

> ... the policy of Mr Hearn's wife has now been 'paid-up'. No further premiums are required. Arrears of premiums and interest have been written off ... The policy on the life of Mr Hearn's son is not a superannuation policy. It has recently been surrendered and paid out.

2.15 The company concerned also noted that it both publishes investment returns *net* of tax and charges, and endorses the disclosure requirements contained in ISC Circulars 290 and 291.

2.16 *Notwithstanding the apparently satisfactory outcome in the case of Mrs Hearn's superannuation policy, the Committee notes that the company's response failed to account for both the agent's conduct and the company's*

continued reliance – until the Committee's intervention – on the agent as its medium for addressing the Hearn's complaints. This study underscores the importance of the general requirements in ISC Circular 276 and 290 [clause 4.2(d)] that life companies and sales agents disclose explicitly all charges in general and penalty fees in particular.

Mr Foley and National Mutual

Submission No 99(a)

2.17 As in the case of Mr Renton, Mr Foley claimed that National Mutual (NML) imposed unilaterally a charge on withdrawals, despite promoting its Superguard Plus vehicle as having no entry or exit fee provisions. Unlike the Renton case however, National Mutual's contract stated that the company reserved the right to impose this sort of additional charge (which it called a 'buy-sell ratio'). Against this point, Mr Foley claimed that the information provided in promotional brochures was too difficult for the 'average client' to understand, thus nullifying the benefit to the consumer of the 14 day free look period. Mr Foley also noted that in response to client protest over the buy/sell ratio, NML withdrew the fee.

2.18 National Mutual's response to these claims stated that since the buy/sell ratio is a term of the policy, 'clients have a 14 day free-look period [which] means that they have an opportunity, even after purchasing the policy, to fully digest its terms, including those terms which allow National Mutual to impose certain conditions at a later date'; *ipso facto*, 'the 14 day free-look period ... enable[s] the client to rescind the contract'.

2.19 National Mutual also stated that the wording of its policies is neither misleading nor unnecessarily complicated. *The Committee observes, however, that a number of case studies magnify the importance of both up-front disclosure of the possible likelihood of new charges being imposed during the life of a policy, and the need for this eventuality and the likely circumstances leading to it to be expressed clearly, and referred directly to the consumer.*

Mr Foley and National Mutual

Submission No 99(b)

2.20 Mr Foley claimed that a major cause of dissatisfaction with certain superannuation plans is the failure to communicate, on an on-going basis, the various fees and charges. He submitted that in some employer sponsored superannuation schemes, which are promoted by life offices, employers and employee members understand clearly the amount contributed to the plan each month. However, many perhaps most members are unaware, if ever told, of the details of fees and charges for administration, insurance, life and disability cover, contributions tax, statements, cheques drawn, transfer to another fund and transfer of portfolio, within the fund. He further claimed that the conditions relating to the transfer of funds from National Mutual Tailored Super to another life office or other approved provider were expressed in such a way that their real impact was not appreciated. It was submitted that members in this plan were required to pay 2.5 per cent of their accrued benefit to transfer from managed funds to capital guaranteed portfolios and that apparently they had not been informed of this prior to making an election on joining the fund.

2.21 National Mutual contested these claims by stating that their technical documents and annexures which were provided in contractual documentation, and annexures to members applications, did itemise the charges associated with a transfer of funds. National Mutual further submitted that Mr Foley had raised issues covered in the trust deed and that the setting of certain charges was the responsibility of the trustees, not National Mutual.

2.22 *This case highlighted the need for a clearer delineation of powers and duties between the promoter/life office, the employer/client and the employee as regards the setting of fees and charges. It was yet another instance of the need to give careful consideration to the idea of having all fees and charges relevant to membership of a superannuation plan itemised in a simply expressed one page schedule at the front of any proposal or contractual documentation.*

Mr Toohey and the AMP

Submission No 220

2.23 Mr Toohey, on retiring at 55 years of age in 1989, transferred his superannuation investment into a rollover fund. He was advised by the superannuation and financial adviser, who was also an agent for the company, that the following charges would apply to the rollover fund:

- entry fee 3-5%
- exit fee 0.5%
- annual policy fee $27.00

2.24 On this basis, Mr Toohey invested $340 000, the entry fee on which amounted to just over $10 000 or approximately three per cent of the investment.

2.25 As Mr Toohey proposed to use this fund as the source of his yearly livelihood, he withdrew $27 000 in January 1991 and $30 000 in November 1991, the latter sum being intended to cover his living expenses for 1992. Following the latter withdrawal, Mr Toohey received an account statement from his company setting out the charges related to his two withdrawals. Included in the charges was a hitherto unmentioned charge called an 'Effect of Adjustment Index on Debit Transaction' fee of $3 027.88. Mr Toohey claims that, when combined with the stated withdrawal fee, this adjustment fee in effect obliterates the interest-bearing return of his investment and will force him to draw down on his capital more quickly than he had allowed for.

2.26 Reinforcing Mr Toohey's claim that neither the company's promotional material nor the agent had referred to this 'midstream' fee *prior* to the sale, Mr Toohey's inquiries with the adviser who had sold him the policy about the adjustment index fee were in vain – the adviser stated he was unaware of this charge.[7]

2.27 AMP submitted that Mr Toohey had incorrectly ascribed the word 'fee' to the Adjustment Factor Index and submitted that the index had been explained in the original sales brochure as a mechanism to reflect changing unrealised asset values.

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[7] Mr G. Condon, Sub No 270.

Retired Police Association – NSW (RPA) and AMP[8]

2.28 The RPA claimed that the rollover fund to which its members belong, AMP Capital Secure Deferred Annuity, had imposed a new fee on withdrawals from this fund. Calling the fee an 'adjustment factor', it applies retrospectively to members who joined the fund after March 1990. Withdrawals from the fund will be subject to both withdrawal fees and the adjustment factor fee (as well as tax).

2.29 In response to complaints from members, AMP agreed to waive the new charge if no withdrawals were made before members reach age 65 years. However, as the RPA argues, this concession is meaningless for those who had based their retirement income streams on regular withdrawals from this fund.

Mr L Sadowsky and National Mutual

Submission No 238

2.30 Mr Sadowsky purchased a long term personal superannuation plan from National Mutual. He deposited a small single premium into the plan and undertook to pay $130 per month thereafter. After three years contributions he decided to transfer his accumulated benefit to an employer sponsored fund.

2.31 Mr Sadowsky informed the Committee that an administrative charge of approximately 23% might be made if the funds were transferred.

2.32 He claimed that when he purchased the policy at no time was it emphasised that, after the qualifying period (said to be two years), would he receive less than the full amount of contributions should he roll the money into another fund.

2.33 National Mutual responded that the administration charge was based on terms and conditions in the original policy document, but conceded that it would appear that the termination charges may not have been clearly

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8 RPA Newsletter, June 1992, p 1.

explained to Mr Sadowsky at the point of sale. National Mutual undertook to arrange an interview with Mr Sadowsky to ascertain what charges were explained to them when he purchased the policy as well as other information pertinent to the complaint.

2.34 *This case highlighted the need for an optimal flow of quality information between the agent and the consumer when private superannuation plans are purchased. It also demonstrates the need for simply presented and standardised information itemising all fees and charges.*

Mrs K Trotter on behalf of the Gap P & C Association

Submission No 269

2.35 Mrs Trotter informed the Committee that her school employed a tuckshop convenor two days a week for approximately 39 weeks each year. She estimated that there would be six months when the tuckshop convenor would earn more than $450 per month and therefore be entitled to SGC superannuation coverage.

2.36 She contended that the shop would be obliged to put $91 into a superannuation fund which over the full year would charge $69 (or approximately 75% of charges) in insurance and administration fees.

2.37 *This case, and a number of others considered by the Committee, highlights the need for a low cost mechanism to cover employees who experience discontinuous workforce participation. In its first report, Safeguarding Super, the Committee recommended that a central fund for lost members be established and that persons in irregular or changing employment have the option of rolling over contributions to this low cost fund.*

2.38 *In its response of 17 December 1992, the Government acknowledged the need to maximise the prospects of these employees receiving their entitlements and, subsequently in their package of prudential control bills, proposed to establish a register of 'lost members' to address this problem. The May 1993 package of Superannuation Industry Supervision Bills further proposes that tax file numbers be used to allow unclaimed benefits to be paid. As well, the legislation provides for the establishment of 'eligible rollover funds' into which unclaimed benefits or lost member funds can be*

deposited. The Committee believes that administration charges still have the potential to eat away superannuation benefits for those in irregular employment and/or with more than one employer. Accordingly, the Committee anticipates further reviewing this problem.

Ms H New and Scottish Australia

Submission No 274

2.39 On entering employment in the clerical industry Ms New was advised that her three per cent SGC contributions would be handled through an insurance policy negotiated with Scottish Australia. Evidently the employer did not wish to contribute to an industry scheme. Having been informed that the company would not receive less than $100 in premium, Ms New agreed to 'top up' the policy by making a personal contribution of $70 per month.

2.40 After 12 months contributions Ms New joined the Tasmanian Public Service and believed that she could roll over her full contributions to that employer's fund. Scottish Australia informed her that she was entitled to only five per cent of her contributions and advised that she maintain her policy, contribute $1200 per year and pay $36 per year administration charges.

2.41 Following the receipt of a letter advising them of adverse evidence, Scottish Australia investigated Ms New's complaint and advised that it acknowledged that the policy had not been to Ms New's advantage and that it had agreed to cancel it from inception. The company further advised that it had not hidden any fees or charges from Ms New who, it claimed, also had a responsibility to read the written material provided.

2.42 *This case demonstrated that those in an employment situation where there exists no award provision for SGC contributions to be deposited in a low cost employer-sponsored or industry fund, there is a strong likelihood that the Government's retirement incomes objective of self provision will be frustrated. The possible disharmony between SGC and award arrangements is a matter which the Committee could examine at some future juncture.*

Mr M Collins and Mercantile Mutual Life

Submission No 275

2.43 Mr Collins informed the Committee that when he redeemed his insurance bonds he specifically asked the companies concerned not to notify the selling agents of his decision. On being subsequently contacted by an agent representing Mercantile Mutual, Mr Collins wrote to that company and LIFA registering his complaint.

2.44 Mercantile Mutual responded apologising for any inconvenience caused by the error. It submitted that copies of termination certificates prepared for clients are automatically generated and sent to their agents. In their haste to finalise the redemption, Mercantile Mutual had omitted to suspend the automatically generated letter.

Ms R Clarke and Mr R Webb and Friends Provident

Submission No 293

2.45 Ms Webb and Mr Clarke purchased personal superannuation policies from Friends Provident Assurance Company Limited. They contributed to the policies for a period of four years. In February 1992, they inquired about rolling over the policies to another financial institution. Having been informed that the surrender values of the policies would be substantially less than total contributions and interest they claimed that they were not advised of on-going or early termination charges at point of sale.

2.46 Friends Provident contended that the agent had given an illustration showing the effect of costs and charges on the values of the policy and that the LIFA Complaints Review Committee could not decide in the favour of Ms Webb and Mr Clarke.

Conclusion

2.47 These case studies, whilst being only a small fraction of total consumer complaints and disputes which arose during the inquiry, demonstrate the breadth and depth of consumer problems in the personal superannuation area. Recent ISC annual reports to the Parliament also manifested these

problems. For example, in its 1988-89 report, the ISC reported that it had received 232 written and 680 telephone complaints and enquiries, adding that a large proportion concerned individual superannuation plans. The report also noted that low surrender values in the early years were mainly due to the initial marketing expenses, that is, agent commission.

2.48 The 1989-90 report showed a deepening problem with 300 written complaints and enquiries and 800 by telephone. The ISC again reported low surrender values combined to make up a large proportion of complaints. The ISC noted that unless a breach of its Act had occurred, little could be done to assist complainants, however, the report went on to outline progress in the development of a three-tiered dispute resolution mechanism which would be run by the industry.

2.49 The 1991-92 report, whilst not identifying actual numbers of consumer complaints, further describes the industry complaints review mechanism and developments within the TPC and the industry to improve the quality of advice given by life agents.

2.50 The Committee notes with interest that the ISC took a 'symptomatic' as opposed to a 'causal' approach to consumer problems, preferring to rectify problems when they occurred as opposed to implementing forward-thinking structural reform. To this end, in the next chapter the Committee expounds on its view that the way to solve these consumer problems is to attack the cause of the problem not merely treat the symptoms.