



**Senate Select Committee on  
Superannuation and Financial Services**

**Main Inquiry  
Reference (a)**

**Submission No. 140**

**Submittor:** Mr & Ms Colin & Laurel Trevena  
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# Senate Select Committee on Superannuation and Financial Services

## Submission regarding mortgage schemes in Tasmania for hearing Friday 18 May 2001.

### SUMMARY

- Colin R Trevena and Laurel C Trevena, directors and shareholders of Calhold Pty Ltd ("Calhold"), invested monies with D.W. and I.M. Tapping Pty Ltd ("Tapping") secured by 1<sup>st</sup> mortgage on residential property.
- Calhold is the largest investor and will suffer the largest loss of funds.
- Australian Securities and Investment Commission ("ASIC") with Calhold's assistance replaced Tapping's voluntary administrator with a liquidator.
- The Tapping directors commenced a defamation action against ASIC, Liquidator and the Mercury newspaper, which is inhibiting investigation of losses; estimated to exceed 65 percent of invested funds.
- Terminated residential property loan funds identifiable with individual investors were pooled and then invested in overvalued commercial property with improper or inadequate security.
- Mr Jon Jovanovic became a director of Tapping after Calhold invested funds. Mr Jovanovic's solicitor wife acted for some borrowers and Tapping. The liquidator has referred Mrs. Jeanette Jovanovic to the Law Society of Tasmania for possible negligence in preparation of mortgage documentation.
- Tapping pooled investor funds, loaned monies without 1<sup>st</sup> mortgage security, in excess of 67 percent of valuation, without mortgage insurance. This was all without agreement from Calhold as the individual largest investor in direct contravention of the written and verbal terms on which funds were placed in trust with Tapping.
- A valid redemption claim by Calhold was dishonored. Interest payments to Calhold were suspended while Tapping continued to trade.
- Loans were advanced to individuals and other companies associated with the Tapping directors without enforceable security resulting in egregious losses.
- Where there may have been a claim against another company for these funds, the Tapping directors forfeited any rights investors may have enjoyed.
- The directors obtained benefits while Tapping was unable to pay its creditors.
- Some valuations, particularly commercial property have shown to be as much as 100 percent overvalued.
- Delays in foreclosure of non-performing loans resulted in debt growing to unserviceable levels.

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4 May 2001

The Secretary  
Senate Select Committee on Superannuation and Financial Services  
Parliament House  
Canberra ACT 2600

By E-mail [super.sen@aph.gov.au](mailto:super.sen@aph.gov.au)

Dear Secretary

## **Submission regarding mortgage schemes in Tasmania for hearing Friday 18 May 2001.**

D.W. & I.M. Tapping Pty Ltd (in liquidation) ("Tapping") conducted a mortgage fund and accepted funds in trust from investors, which unlike for example Solicitors Trust Funds, were apparently not guaranteed or protected by indemnity insurance. I understand from my solicitor that the relationship between Tapping and investors may have elements in addition to that of trustee and beneficiary.

I am a director of Calhold Pty Ltd ("Calhold"). Calhold to my knowledge invested on trust the largest amount of funds of any investor with Tapping. Calhold is still owed more than \$320,000.00 after deducting a single distribution by the liquidator of 17.5 cents in the dollar.

Late in 1999, the Australian Securities and Investment Commission ("ASIC") commenced action to put Tapping into liquidation with significant input from Calhold's legal and accounting representatives. In October 1999, Tapping directors had voluntarily appointed an administrator before I provided Fleur Grey of the ASIC with an affidavit to support an application for liquidation. To my knowledge the ASIC are yet to act against the directors for potential breaches of corporation law as identified in the Federal court liquidation application proceedings and by the liquidator. The court appointed liquidator is Mr John Woods of Moore Robsons, Chartered Accountants of 30 Davey Street, Hobart. Telephone (03) 6223 4799. He is continuing to liquidate assets and provide reports to the ASIC, investors and creditors.

I understand the liquidator provided the ASIC with a preliminary report. Subsequent meetings of investors and creditors have exposed activities by the directors that might contravene corporation law and possibly criminal law. I also note Mr Jon Jovanovic and Mr Ian Tapping, Tapping directors (not the company) commenced a defamation action against Mr John Woods and Moore Robsons, Mr Scott Purdon of ASIC and ASIC as well as "The Mercury" newspaper and reporter David Carrig. A transcript of the February 13, 2000 hearing before Justice Marshall in the Federal Court at which the Court ordered the

appointment of the liquidator should confirm Jon Jovanovic admitting Tapping was insolvent. The currency of this defamation case may be inhibiting the ASIC and John Woods of Moore Robsons carrying out their corporate law tasks? It may also have restricted "The Mercury" in its exposure of this mortgage scheme's financial failure. The plaintiffs have applied to the court to submit a revised statement of claim. They are legally unrepresented which actually assists them by mixing up supposed evidence with claims thus confusing the issues. Confusion of the issues thwarts the defendants in having the action struck out or being declared vexatious. The most recent judgement by Justice Cox refers to this confusion of evidence in the statement of claim and his granting them more time to prepare a statement of claim that can be properly argued. In the mean time legal costs of the defendants are rising.

Tapping was entrusted with investor funds that were to be loaned only on specific 1<sup>st</sup> mortgage at no more than 67 per cent of valuation and protected by mortgage insurance. Funds invested had a minimum tenure of 12 months and then repayment on 90 days notice.

In 1994 on behalf of Calhold, I asked my solicitor Scott Breheny of Hand Ogilvie and Breheny, to invest funds on first mortgage. He was unable to place funds at that time. I then investigated the bonafides of Tapping in response to a newspaper advertisement including confirming with my solicitor that Tapping was a reputable firm. After further negotiations with Mr Ian Tapping, I arranged to lodge funds in trust with Tapping for application to residential property loans. Before handing over the Calhold cheque I took the documentation for three residential property mortgages from Tapping to my solicitor to ensure Calhold was fully protected. I expected Calhold's name to appear on the mortgages. After being assured by my solicitor the documents were in order I returned them to Tapping on 14 July 1994 with a \$367,000.00 cheque to be applied to their settlement.

Calhold specifically funded these three 1<sup>st</sup> mortgages on the understanding that the mortgages were on residential property at no more than 67 percent of valuation that carried mortgage insurance, all in accordance with written and verbal undertakings given by Mr Ian Tapping to me on behalf of Calhold. Interest was paid regularly and when Mr Tapping advised another set of mortgages were available another \$175,000.00 was entrusted.

On 5 June 1997 I wrote to Tapping giving 90 days notice of withdrawal of all funds. The directors of Tapping had been revising interest rates downward at a greater rate than Commonwealth Bank interest rate reductions. A few days before 5 September 1997 I phoned Mr Ian Tapping to make arrangements to collect the Tapping cheque. Ian Tapping advised he was unable to make restitution of all or any part of the invested funds plus interest to date. I immediately commenced dialogue with him and then found I was dealing with Mr Jon Jovanovic who indicated he was a director of Tapping. ASIC records show Mr Jon Jovanovic was appointed a director of DW and IM Tapping Pty Ltd late in 1994. Calhold received no advice of this change in management. During the liquidation hearing in the Federal Court, Mr Jovanovic indicated he was appointed a director on the basis of his ability to find borrowers. Mr Jovanovic was paid procurator fees. Mr Jovanovic's solicitor wife handled some legal documentation for borrowers and Tapping.

Sporadic interest payments were made from September 1997 to December 1997. Calhold then sought legal advice from Mr Alastair Shepherd of Hand Ogilvie and Breheny. Mr Shepherd requested information from Tapping over an extended period and eventually met with Tapping directors and their legal adviser Mr David Wallace. Offers to transfer mortgages from Tapping to Calhold to the value of outstanding loans were made. Subsequently these mortgages were found to be non-performing. Early in the second half of 1998 Mr Shepherd on Calhold's instructions contacted the ASIC after Calhold had engaged an accountant to review the Tapping accounts. After ASIC intervention Tapping entered voluntary administration. Calhold did not oppose confirmation of the administrator's appointment subject to undertakings given by the administrator at the first creditors meeting. These undertakings

were subsequently breached. Calhold then supported the ASIC in a court action to replace the administrator with Mr John Woods as provisional liquidator and then confirmed as liquidator in February 2000.

My solicitor, the administrator and the liquidator reports' show the original terms attached to loans and undertakings given to investors changed significantly from that operating at the time when Calhold invested. Calhold was not advised of nor agreed to the changes. Liquidation exposed a particular loan that was on the same property as one of the original three checked by my solicitor. This had been changed to a 2<sup>nd</sup> mortgage and was never agreed to by Calhold.

Funds were pooled and often loaned on second mortgage and in some cases with no effective security at all. Funds were advanced at greater than 67 percent of valuation without any reference to investors. Mortgage insurance was not renewed or established on new loans. Paid out loans from specific investors on residential property were pooled with others and loaned to purchase plant and equipment without enforceable security. I attach one of a number of the Liquidators reports that describes some of the assets and the likely shortfall. Please note the Couper debt mentioned in this report has subsequently and very reluctantly been finalised by Couper agreeing to pay \$200 per month for 24 months confirming a loss of \$152,000. This was a shop and residence. It should be determined if the original loan was for any goodwill, stock, fixtures and fittings that were represented as property in establishing a valuation on which to loan 67 percent or less.

Funds were loaned to Tapping director Mr Jon Jovanovic with no registered security and the caveat presently over his family residential security property lodged by the liquidator immediately on his court appointment is being contested at further cost to the disadvantaged investors. This loan appeared in the Tapping books as Doyle, not Jovanovic. The address of the property is Doyle Avenue, Lenah Valley. See the attached Liquidator report. Subsequent to the appointment of Mr Jon Jovanovic as a director, the loan book indicates commercial investments became a major part of borrowings as against Mr Ian Tapping's assurance to me at the time of Calhold's initial investment that Tapping's focus was residential property.

Mr Jovanovic claims the value of the loan to him should be offset against foregone commissions. This director presumably must have been aware of the advance of those funds to him. Apparently Tapping operated a single bank account which begs investigation of inappropriate use of trust funds. It is also possible the fund operated while insolvent in circumstances where valid redemption calls were ignored and only select investors paid interest. If so, it is possible the directors withdrew funds to their own advantage while Tapping was insolvent. Certainly over the time investor interest was denied and remained unpaid, rent, power, telephone, insurance and other expenses must have been paid.

The largest loan of the mortgage fund was made on a commercial property to a company with some common directors to Tapping. There is some conflict on the terms under which this property was secured but the upshot is a total loss in excess of \$700,000.00 will be booked to the fund. In addition if there were any grounds for a claim against the 1<sup>st</sup> mortgagee, the Tapping directors signed that away. See the attached Liquidator report.

Improvements apparently funded by the Tapping fund, made to the property, were not safely secured and subsequent sale of those improvements went to the credit of another company in liquidation with some common directors to Tapping. Approximately \$57,000.00 of Tapping funds purchased food-processing machinery from New Zealand to be used by Coal River Processing Pty Ltd ("CRP") that shared common directors with Tapping. The Liquidator of CRP sold this equipment to the benefit of CRP creditors. Re-valuations of this property doubled its value in a very short time but subsequent auction attempts have not reached the original valuation. See the attached Liquidator report.

Valuations of properties by a particular registered valuer appear to be grossly inflated when attempts to sell them resulted in large losses of investor funds. The press has reported that investors in the Piggott Wood and Baker solicitor fund and, or Piggott Wood and Baker are suing this Valuer. Funds were advanced to borrowers in excess of the 67 per cent valuation limit without any reference to investors as agreed with individual investors including Calhold. Some mortgaged property was uninsured.

Director Mr Jon Jovanovic may have extracted procurator fees from loan funds while the company was possibly insolvent. Directors continued to pay themselves and draw down on performing loans while reducing or ceasing payments to some investors claiming their loans were non-performing. Delinquent repayments were allowed to capitalise without taking reasonable action to recover funds and limit losses. Mortgage insurance was taken in the first year when funds were originally invested and never renewed or commenced on new loans. There was no system to ensure adequate insurance was maintained on mortgaged property.

Any negligence by solicitors and valuers should also be investigated. The liquidator has commenced investigations by reference to the Law Society of Tasmania of possible negligence in preparation of mortgage documentation by solicitor Jeanette Jovanovic, the wife of Tapping director Jon Jovanovic. Procurator fees received by Jon Jovanovic and added to mortgage values should be examined.

Some Tapping investors have subsequently died. It is imperative this liquidation proceed without further delay induced by the Tapping directors and any other impediments they can devise to stall a proper examination of the facts. The inevitable shortfall in funds must result in examination of grounds for a claim against Tapping directors and Tapping shareholder assets. Time should not have diluted or disposed of those assets so nothing might be recoverable.

Similarly examination of Registered Valuers and solicitors should be conducted to establish full professional care was taken when undertaking work for the mortgage fund including giving up a possible claim on the 1<sup>st</sup> mortgagee holder of the largest loss of the loan book. Whether any secret inducements were offered. Any negligence should be claimed from them or their indemnity insurance. Any breach of criminal law should be prosecuted.

The Marks Royal Commission in Western Australia was set up by the Richard Court government to examine Finance Broker controlled Mortgage Funds. The press reporting on the commission's hearings has identified certain anomalies common to a number of mortgage funds in that state. These include -

- 1 Inflated valuations by registered Valuers to artificially increase borrower equity to qualify for a loan.
- 2 Procurator fees extracted from loan and other establishment fees added to loan value.
- 3 Success fees paid to Valuers and solicitors in addition to reasonable professional fees.
- 4 Excessive premium interest between that paid to investors and the promoters of these funds that were unsustainable and resulted in new investor funds being used to meet existing liabilities with an inevitable conclusion.

It is clear there needs to be some mechanism to ensure the borrower's equity in a property is real and not artificial due to an unrealistic valuation. Where a loan is greater than 67 percent of purchase price but less than 67 percent of valuation some further accountability should be introduced.

My experience has shown there should be changes to the law so that mortgage fund companies include the following in their prospectus or advise during the course of investment

- (a) Changes in beneficial ownership and/or management control

- (b) A concise annual report be provided to investors
- (c) Interest rate spread between investor and borrower rates and any variations during the term of loan
- (d) Pooled funds indicate the percentage mix of residential and commercial property
- (e) There be some upper limit to commercial property percentage
- (f) Commercial property re-valuations are undertaken regularly
- (g) Limit the proportion of the total fund any single investor can lodge or failing this limit the rate of redemption by large investors and state this in the prospectus
- (h) Any loan other than 1<sup>st</sup> mortgage is not from pooled funds and only with the specific written agreement of the named investor(s).
- (i) Any loan to mortgage fund owners, management or related parties is declared and no interest rate advantage is provided.
- (j) All procurator fees and legal fees charged by related parties declared.
- (k) Any repayment or interest holiday period granted to borrowers be limited to prevent any debt capitalising beyond realisation value

Where a fund enters administration, receivership or is liquidated steps should be taken immediately to protect investor's funds and expedite winding up including examination of directors and management. Currently the delay in realisation limits returns to investors.

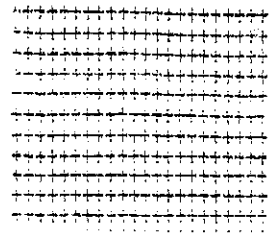
Calhold is resigned to a significant loss of probably some 70 cents in the dollar, which is far more than press reports of other mortgage fund losses. We felt we were prudent in our spread of investments including the Tapping mortgage fund. This fund and its precursor the Wellington Co-Operative Building Society(s) had traded successfully for generations. Our only hope of realising funds to cover the asset shortfall is indemnity insurance from Valuers, Solicitors or Auditors should they be found to have acted negligently or a successful action for damages from the directors based on breaching their undertakings and negligence or under the Corporations Law.

I would be happy to attend the scheduled hearing and expand on the above and answer any questions under oath. After the initial hearing set down for 18 May 2001 the Committee may care to consider calling the operators of these funds before them and questioning their methods of operation.

Yours faithfully

Colin R Trevena  
Director

Enclosure: 11 July 2000 Report by Liquidator.



**M O O R E  
R O B S O N S**

**MOORE ROBSONS**  
Chartered Accountants

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Corporations Law

## **REPORT BY LIQUIDATOR**

IN THE MATTER OF

**D.W. & I.M. Tapping Pty Ltd  
(In Liquidation)  
A.C.N. 051 859 682**

### **Preamble**

I, John William Woods of Moore Robsons, Chartered Accountants of 30 Davey Street, Hobart, was appointed liquidator of the above company on the 23rd day of February 1999 by Order of His Honour Mr Justice Marshall given in the Federal Court of Australia.

The history of the company and a summary of the investigation carried out by the Australian Securities and Investments Commission are set out in items 2 and 3 of the report by the former administrator dated 1 December 1998.

### **The Company and Tasmanian Trustees Ltd**

At the Court proceedings held on 22<sup>nd</sup> and 23<sup>rd</sup> February 1999 a director of the company, Mr Jovanovic, raised (in general terms) the matter of a possible damages action against Tasmanian Trustees Ltd. In addition to my normal duty to investigate such an allegation, I gave an undertaking to the Court that I would report my findings to a meeting of creditors. Accordingly, accompanying this report is a notice of meeting called to comply with that undertaking and to formally table this report.

I have carried out an investigation into the actions of Tasmanian Trustees Ltd in connection with the G.W. Stanton & Associates Pty Ltd loans affair and have obtained legal advice where necessary. The documents provided to me indicate that the directors of D.W. & I. M. Tapping Pty Ltd signed a release in respect of the company's dealings with Tasmanian Trustees Ltd. Consequently, in this regard, I am advised that any action against Tasmanian Trustees Pty Ltd would be fruitless.

### **Realisation of Assets**

In my circulars to investors I have advised details on the realisation of many of the security properties. The majority (in number) has resulted in a full recovery of the respective debts however difficulties have been encountered with several securities that are of high dollar value. I comment on some of these high dollar value loans as follows -



**Chartered Accountants**

Partners:  
Ross Byrne  
Chris Junes

Rod Moore  
Peter Muckridge  
John Woods



## Realisation of Assets (cont.)

COUPER - Bruny Island

The sale of this property resulted in a loss of some \$157,000. Although there were initially a number of interested parties, it transpired that the structure on the property did not have Council approval and required extensive work before the local Council would even consider any application. In short, the property was worth little more than unimproved value

BURDON - Bridgewater

This was a "special use" property built as an indoor cricket centre and its location made it unsuitable for any other purpose save as a non-secure storage area. The property was eventually sold for \$190,000 which, although in excess of its current market value of \$165,000, resulted in a shortfall of \$125,000.

STANTON - Glenorchy

This property is the subject of the largest single loan in the company's portfolio (\$700,090). The security is in the nature of an unregistered second mortgage and, even if the security is enforceable, I am advised that the equity remaining after the first mortgagee's debt is satisfied is, at best minimal and, in all probability, nil.

JACOBSON - Lewisham

Jacobson is presently in liquidation and the security consists of a number of unimproved blocks of land. Real estate agents operating in that area advise that any movement of property in that vicinity is exceedingly slow and predict difficulties in obtaining any meaningful price. To date, only one block has been sold.

ROBSON - Smithton

This property is not situated in one of the "better" parts of Smithton and all attempts to sell it (including auction) have proved unsuccessful. The outstanding debt as at 30 June 2000 was \$123,357 and, in all probability, the unrecoverable portion could run to \$100,000.

JOVANOVIC - Lenah Valley

This security consists of an unregistered second mortgage on a property at Doyle Avenue, Lenah Valley. A caveat has been lodged to protect the second mortgage however the mortgagor has applied to have the caveat removed. Although I have resisted such a removal, I understand that Mr Jovanovic claims that the debt has been extinguished in the form of an offset in respect of fees and the like otherwise payable to him by D.W. & I.M. Tapping Pty Ltd. Should the Court uphold his assertions, the prima facie debt as at 30 June 2000 of \$71,303 may be completely irrecoverable.

## Distribution to Depositors

As at 31 October 1998 the balance of depositors funds aggregated \$1,766,496.21 (see schedule appended). Notwithstanding the difficulties encountered in realising on the security properties, sufficient funds are presently available to make a distribution of some 17¢ in the \$. I have received a number of conflicting submissions as to whether a distribution should

**Distribution to Depositors (cont.)**

be made now or deferred until such time as the liabilities of the directors (if any) are determined. I have included this matter as an agenda item on the accompanying notice of meeting so as to ascertain the will of the depositors. You should note that while any resolution put to the vote is normally decided on the voices (*Corporations Regulations 5.6.19 (1)*), should it become necessary to conduct a poll, a resolution is decided by a majority in both number and value (*Corporations Regulations 5.6.21*). In my circular of 24 February 1999 I advised depositors of their respective balances as now listed on the appended schedule. No depositor creditor has disputed the amount advised and I have accepted each as being correct.

**Dated the eleventh day of July 2000**

Yours faithfully,

**(John W Woods)**  
**OFFICIAL LIQUIDATOR**

# D.W. & I.M. TAPPING PTY LTD

A.C.N. 051 859 682

(IN LIQUIDATION)

## Investor Creditors as at 31 October 1998

1	Austin	R	25,887.84
2	Bartley	B D	7,250.17
3	Barwick	I B	5,575.01
4	Barwick	M E & I B	93,222.71
5	Calhold Pty Ltd		384,972.32
6	Cowles	K F & J E	84,427.03
7	Cuthbertson	J A	15,640.00
8	Cuthbertson	P M	15,535.12
9	Davis	R H	51,786.54
10	Dawson	J L	36,247.78
11	Harvey	L	15,080.58
12	Heerey	F L & T B	60,938.00
13	Lazenby	E H	51,410.12
14	Meredith	R	25,723.75
15	Moore	R & R	10,221.70
16	Nation	L W & A P	11,395.38
17	Perkins	W A	91,499.51
18	Pratt	H & J	9,711.94
19	Rackett	A	10,358.40
20	Rackham	C A	46,608.73
21	Richardson	M R & C E	15,437.13
22	Schneider	W	8,235.76
23	Stockwin	N & K	10,291.05
24	Tapping	D.W. & I. M. Pty Ltd	38,735.90
25	Tapping	I M	157,384.06
26	Tapping	M E	121,075.15
27	Tapping	R & I	40,456.89
28	Wallace Bros		311,095.59
29	White	R L & E I	10,291.05
			<u>1,766,496.21</u>

