

Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a)

Submission No. 160

Submittor: McCulloch & McCulloch
Mortgage Fund
Mr Peter Joyce

McCULLOCH & McCULLOCH

(A legal practice under Management by virtue of an Order made under section 119 of the
Legal Profession Act 1993)

16 May 2001

The Secretary
Senate Select Committee on Superannuation & Financial Services
Parliament House
CANBERRA

Attention Tracy Noble

Dear Sirs

Re: **Hobart Hearing – McCulloch & McCulloch Mortgage Fund**
Our Ref: **PJJ/jb/981339**

I refer to our telephone conversation today and attach an amended Report in relation to the McCulloch & McCulloch Mortgage Fund, completed by me, as Manager.

Yours faithfully

McCULLOCH & McCULLOCH

Per:

Peter Joyce
Appointed as Manager under Section 119 of the *Legal Profession Act*

**McCulloch & McCulloch Mortgage Fund
Report by Manager – May 2001**

On 28 May 1998, I was appointed by the Supreme Court pursuant to the Legal Profession Act 1993, as Manager of the legal practice of David Alistair James McCulloch trading as McCulloch & McCulloch of Hobart, for a period of 42 days following the suspension of Mr McCulloch from practice from 28 May to 5 July 1998. My appointment, as Manager, has been extended by the Court from time to time since.

Immediately after my appointment, I met with Mr McCulloch.

Mr McCulloch told me the practice of McCulloch & McCulloch had no current legal files, as they had been transferred to the practice of McCulloch & Associates, conducted by Mr Alistair McCulloch's brother, Mr Quentin McCulloch. I understood that Mr McCulloch had anticipated his suspension from practice and had arranged with his fellow practitioner and the relevant clients, that the legal files would be transferred away from McCulloch & McCulloch. I was also informed that mortgages had been transferred from McCulloch & McCulloch to McCulloch & Associates.

Mr McCulloch told me that the only documents under his firm's control were various mortgage documents. At that time, I took possession of the documents relating to the following mortgages:

	Principal Sum Secured by Mortgage	Status of Mortgage at time of appointment
1	30,500.00	Interest up to date
2	19,000.00	Interest up to date
3	80,000.00	Some interest in arrears
4	95,000.00	Interest up to date
5	95,000.00	Interest up to date
6	110,000.00	Interest up to date
7	9,600.00	Some interest in arrears
8	50,000.00	Interest up to date
9	105,000.00	Interest up to date
10	150,000.00	Interest up to date
11	52,500.00	Interest up to date
12	110,000.00	In default from 1 February 1998
13	1,521,500.00	In default from 1 February 1997
14	319,000.00	In default from 1 February 1997
15	192,000.00	In default from 1 May 1998
16	32,000.00	In default from 1 February 1997

17	26,400.00	The Mortgaged property had been sold by the Mortgagee (McCulloch) before my appointment because of the borrowers default in paying interest, leaving \$26,400.00 outstanding.
18	14,000.00	In default from 1 February 1997
19	22,000.00	In default from 1 February 1997
20	33,000.00	In default from 1 February 1997
21	60,712.49	In default from 1 February 1997
22	104,000.00	In default from 1 February 1997
23	80,000.00	Interest up to date
24	50,000.00	In default from 1 May 1998
25	125,000.00	In default from 1 February 1998
26	26,000.00	Some interest in arrears
27	55,000.00	Some interest in arrears
28	55,000.00	In default from 1 August 1997
29	200,000.00	Interest up to date
30	65,000.00	Interest up to date
31	76,500.00	Interest up to date
32	233,000.00	Interest up to date
33	100,000.00	Interest up to date
34	42,500.00	Some interest in arrears

In summary, the 34 mortgages under my control secured capital moneys of totalling \$4,400,812.49, plus significant arrears of interest.

In the case of mortgages in default, written demand was made for repayment of principal and interest.

In the case of mortgages not in default, letters were sent to all borrowers, advising that as the loans had been written on demand, demand for repayment was made and the borrowers should immediately seek to refinance. (Mr McCulloch had earlier written to all borrowers, also making demand and requesting repayment of the mortgage monies). With one exception, those borrowers who subsequently refinanced, did not do so willingly and significant effort was expended in forcing the issue. One loan was in the course of repayment, and that was completed in due course.

Numerous Mortgagee sales have been effected. With one exception, the Mortgagee sales have resulted in a loss of capital money to investors (with a consequential loss of interest). This unfortunately reflects the low quality of the security properties. In relation to the one exception, all capital moneys and interest was recovered from the sale proceeds, with a little left over.

The attached Chart shows the current situation.

There were 222 investors in the mortgage fund at the commencement of my administration. There are now 105 investors left in the mortgage fund.

Of the balance capital funds subject to collectional proceedings, realistically 100% of the capital moneys will not be recovered, but I am optimistic that, say, 60% of capital moneys should be recoverable.

There has been, and will be, a significant loss of interest monies upon capital moneys repaid to investors.

Yours faithfully
McCulloch & McCulloch

Per:

Peter Joyce
Appointed as Manager of McCulloch & McCulloch under section 119 of the Legal Professions Act

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McCulloch & McCulloch Mortgage Fund

Part A - Completed Matters - All funds recovered

	PRINCIPAL SUM LENT	AMOUNT OF PRINCIPAL SUM RECOVERED	AMOUNT OF PRINCIPAL SUM SUBJECT TO RECOVERY ACTION	AMOUNT OF LOST PRINCIPAL	CURRENT POSITION/ COMMENT
1	\$30,500.00	\$30,500.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
2	\$19,000.00	\$19,000.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
3	\$80,000.00	\$80,000.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
4	\$95,000.00	\$95,000.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
5	\$95,000.00	\$95,000.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
6	\$110,000.00	\$110,000.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
7	\$9,600.00	\$9,600.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.

	PRINCIPAL SUM LENT	AMOUNT OF PRINCIPAL SUM RECOVERED	AMOUNT OF PRINCIPAL SUM SUBJECT TO RECOVERY ACTION	AMOUNT OF LOST PRINCIPAL	CURRENT POSITION/ COMMENT
8	\$50,000.00	\$50,000.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
9	\$105,000.00	\$105,000.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
10	\$150,000.00	\$150,000.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
11	\$52,500.00	\$52,500.00	-	-	All capital moneys and interest recovered upon mortgagor refinancing/repaying. No loss to investors.
12	\$110,000.00	\$110,000.00	-	-	All principal and interest recovered from the sale of mortgaged property. No loss to Investors.
13	\$1,521,500.00	\$1,521,500.00	-	-	Loan declared in default. Principal sum should be recovered from Trust. Interest will not be recovered from Trust.
14	\$319,000.00	\$319,000.00	-	-	\$135,957.38 recovered from a mortgagee sale. Balance loan declared in default and passed to Solicitors Trust. Balance principal recovered by investors from Trust. No interest recovered by Investors.
15	\$192,000.00	\$192,000.00	-	-	Loan declared in default. Principal sum recovered from Trust. No interest recovered by Investors.

McCulloch & McCulloch Mortgage Fund
Part B - Funds Lost

	PRINCIPAL SUM LENT	AMOUNT OF PRINCIPAL SUM RECOVERED	AMOUNT OF PRINCIPAL SUM SUBJECT TO RECOVERY ACTION	AMOUNT OF LOST PRINCIPAL	CURRENT POSITION/ COMMENT
16	\$32,000.00	\$9,864.40	-	\$22,135.60	Mortgaged property sold. Mortgagor bankrupt. Balance principal sum and arrears of interest unrecoverable from Mortgagor.
17	\$88,000.00	\$61,600.00	-	\$26,400.00	Mortgaged property sold. Mortgagor bankrupt. Balance principal sum and arrears of interest unrecoverable from Mortgagor.
18	\$14,000.00	-	-	\$14,000.00	Mortgaged property not realisable. Mortgagor bankrupt. Balance principal sum and arrears of interest unrecoverable from Mortgagor.
19	\$22,000.00	\$14,966.61	-	\$7,033.39	Mortgaged property sold. Mortgagor bankrupt. Balance principal sum and arrears of interest unrecoverable from mortgagor.
20	\$33,000.00	\$12,229.80	-	\$20,770.20	Mortgaged property sold. Mortgagor bankrupt. Balance principal sum and arrears of interest unrecoverable from mortgagor.
21	\$60,712.49	\$31,976.78	-	\$28,735.71	Mortgaged property sold. Mortgagor bankrupt. Balance principal sum and arrears of interest unrecoverable from Mortgagor.

McCulloch & McCulloch Mortgage Fund

Part C - Other Loans - Subject to Collection Proceedings

	PRINCIPAL SUM LENT	AMOUNT OF PRINCIPAL SUM RECOVERED	AMOUNT OF PRINCIPAL SUM SUBJECT TO RECOVERY ACTION	AMOUNT OF LOST PRINCIPAL	CURRENT POSITION/ COMMENT
22	\$104,000.00	\$35,719.33	\$68,280.67		One of two Mortgagors bankrupt. Legal proceedings commenced against other mortgagor. Those proceedings are being defended by that mortgagor.
23	\$80,000.00	-	\$80,000.00	-	Valuation report discloses that mortgaged property is worth substantially less than principal sum lent. Investors have agreed to wait and see if mortgagor can refinance property. Mortgagor to continue to pay interest and refinance if possible.
24	\$50,000.00	\$18,295.00	\$31,705.00	-	Legal proceedings commenced against mortgagor for shortfall. Mortgagor is defending those proceedings.
25	\$125,000.00	-	\$125,000.00	-	The mortgaged property continues to be offered for sale. Property unattractive and no interest.
26	\$26,000.00	-	\$26,000.00	-	This is a second mortgage. It is unlikely that the investors will recover any funds.
27	\$55,000.00	\$37,347.64	\$17,652.36	-	The mortgaged property continues to be offered for sale. Property unattractive and no interest.
28	\$55,000.00	\$26,221.76	\$28,778.24	-	The balance of the mortgaged property continues to be offered for sale. No interest. legal proceedings have been commenced against remaining guarantor. (Other guarantor has gone bankrupt).
29	\$200,000.00		\$200,000.00		Mortgagor has kept interest up to date and has ignored demands to refinance. The Mortgagor may not be able to refinance as it has little equity in the property. Proceedings are now being taken to realise the mortgaged property.

	PRINCIPAL SUM LENT	AMOUNT OF PRINCIPAL SUM RECOVERED	AMOUNT OF PRINCIPAL SUM SUBJECT TO RECOVERY ACTION	AMOUNT OF LOST PRINCIPAL	CURRENT POSITION/ COMMENT
30	\$65,000.00	-	\$65,000.00	-	Mortgagor has kept interest up to date and has ignored demands to refinance. The Mortgagor may not be able to refinance as it has little equity in the property. Proceedings are now being taken to realise the mortgaged property.
31	\$76,500.00	-	\$76,500.00	-	Mortgagor has kept interest up to date and has ignored demands to refinance. The Mortgagor may not be able to refinance as it has little equity in the property. Proceedings are now being taken to realise the mortgaged property.
32	\$233,000.00	\$60,000.00	\$173,000.00		Mortgagor completed partial Discharge of Mortgage. Mortgagor has kept interest up to date and has ignored demands to refinance. The Mortgagor may not be able to refinance as it has little equity in the property. Proceedings now being taken to enforce security.
33	\$100,000.00	-	\$100,000.00	-	Mortgagor has kept interest up to date and has ignored demands to refinance. The Mortgagor may not be able to refinance as it has little equity in the property. Proceedings are now being taken to realise the mortgaged property.
34	\$42,500.00	-	\$42,500.00	-	Mortgaged property continues to be offered for sale. Property very unattractive. Estimated that only half of the moneys lent will be recovered. Mortgagor has left Tasmanian and her whereabouts are not known.
	\$4,400,812.49	\$3,247,321.32	\$1,034,416.27	\$119,074.90	

Summary

- Amount of principal sum recovered
- Amount of principal sum subject to recovery action
- Amount of lost principal

73.79%

23.51%

2.71%