


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

**Main Inquiry
Reference (a)**

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Submittor: Mr Peter Kang-Scheit
227 Saltwater River Road
PREMAYDENA TAS 7185
 - (03) 6250 3388

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PETER & JO VON KANG-SCHEIT

227 Saltwater River Rd., Premaydena TAS 7185, Australia
Phone 61 - 3 - 62 50 33 88 / Fax 61 - 3 - 62 50 33 99

The Secretary, SENATE COMMITTEE ON
SUPERANNUATION AND FINANCIAL SERVICES
Parliament House
C a n b e r r a ACT 2600

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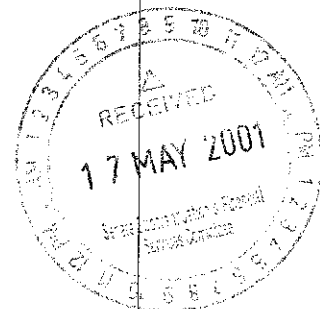
REVISED SUBMISSION AT COMMITTEE REQUEST

Re.- Solicitors Mortgage Schemes in Tasmania

Dear Ladies and Gentlemen,

My wife and I are Australian citizens, 65 and 59 years old. We arrived in Tasmania in 1994 to semi-retire as tourism operators. I was a healthy, enthusiastic, multiskilled and multilingual ex business executive with impeccable credentials and a wealth of overseas experience and contacts. My Chinese wife is a qualified arts and language teacher (Chinese & Japanese), and looks back on a 25 year successful business as a fashion designer and manufacturer. We brought with us more than 1 Million Dollars in net assets, and we were willing to invest in Tasmania's future. We tried to follow the Tasmanian Government's "directions", but it seems to me that these direction change from day to day, week to week, month to month, year to year. Although (maybe because) I have worked very hard (at times 21 hours per day, seven days per week), I am now no more than a disability pensioner on the verge of bankruptcy, with a lifethreatening medical condition, which requires urgent surgery. I have cancelled surgical procedures scheduled for 16 and 17 May 2001 in order to be able to give evidence before the Enquiry if required or requested.

I can offer large amounts of relevant documentation, but I can not send copies with this submission, because I no longer have a functioning copier or computer. I can, however, bring these documents with me to Hobart.



61362503609

- 2 -

BACKGROUND, FACTS AND OBSERVATIONS

I regard a failure of three solicitors mortgage funds in Tasmania and a shortfall of 20 Million Dollars only as the tip of the iceberg. Another 15 funds still exist, and I know from first hand experience that some these 15 are not without serious problems. I can see the potential for an additional shortfall in the vicinity of 100 Million Dollars, because emergency funds administered by the Law Society are already depleted, and financial institutions like Perpetual Trustees and Tasmanian Trustees would not be able to absorb such a volume of mortgage lending, as solicitors try to transfer problem loans to other institutions as an exit strategy.

The underlying problem is the bad quality of security accepted by solicitors for funds advanced. A proper bank (I exclude the former Tasmanian Trust Bank from this term), building society or credit union would not lend money on conditions, which some solicitors have naively and negligently regarded as acceptable. A responsible financial institution will consider a borrower's income and overall capacity to repay as the most important criterium for a lending decision. Not so solicitors, who feel safe enough with interest-only loans, relying on no more than security value, as long as they feel that - in case of a default - securities can be realized at a discount in accordance with security ratios (normally between 50 and 65%). This is a lending policy, which encourages speculation on one hand and underutilizes collateral for legitimate business purposes on the other.

Solicitors Mortgage Trust funds have attracted higher interest rates for investors (and trust funds on occasion). With big banks becoming more cautious, it is no surprise that investors flocked to solicitors, who they thought they could trust. On the other hand, solicitors have been charging commission in addition to interest regardless of as to whether mortgage funds were incorporated in legal firms as in the case of Gunson Pickard & Hann of Hobart. Furthermore, some lawyers send out their interest bills with often only a few days notice (in my last case, the invoice from Gunson Pickard & Hann was dated 4 April, received 9 April and due 15 April). Late payment will attract penalty interest at a flat 2 percent, regardless of the number of days by which a payment may be late. A few days on all 4 quarterly payments will cost a minimum of an extra 8% and will, therefore, virtually double the interest. I have received information that the penalty interest is collected for the benefit of the managing lawyers, not for the benefit of investors. I have not as yet been able to verify this information beyond doubt, and the enquiry may be able to establish the circumstances of this practice of penalty interest collection. In addition, solicitors mortgage funds do not follow market trends in interest rates. Gunson Pickard & Hann have increased their interest rates from 7.25% in July 2000 to 8.4% last month, regardless of falling interest rates with banks, building societies or credit unions.

As far as the public is concerned, trust must be the most important issue. In my opinion, no lawyer can be trusted, as long as one dishonest or unethical lawyer is allowed to continue to practice. I always thought that it was the Law Society's role to ensure that only 100% trustworthy lawyers are allowed to practice. In view of my experiences, the opposite can be the case. Recent legislation has tightened control over solicitors mortgage schemes. This is a great improvement, however, I believe that such schemes should not be allowed to operate at all, even if lawyers submit themselves to the tighter controls. Firstly, there is the issue of conflict of interest. A legal practitioner operates - necessarily so - in an environment of confidentiality. The accumulated confidential knowledge in a legal firm should not be used for investment purposes, because investors can not share this knowledge, nor can the legal practitioner provide sufficient transparency. Secondly, similar to the separation of powers in a Government environment, investors need a separation of remedies. Professional and institutional lenders and their customers alike frequently require legal advice and services when they deal with each other. If a lawyer becomes also a lender, if a lawyer's client becomes also a borrower or investor, appropriate checks and balances disappear. Under such circumstances it becomes difficult to know which hat a

61362503609

- 3 -

lawyer is wearing.

Going back to existing solicitors mortgage schemes, how did the system come unstuck? Banks and building societies will use their own valuers or specify valuers with a proven track record to establish realistic real estate values. Where large sums are involved, experienced accounting firms are consulted. Professional lenders take extreme care regarding valuations and justify the relevant fees passed on to the consumer. Registered Real Estate Valuers come traditionally from the ranks of real estate salesmen, and it is natural that in many cases their expertise, ethics and conscientiousness have not improved much with their advancement from salesman or saleswoman to valuer.

In my case, a valuer erred to such a degree, that an investment of 330,000 Dollars in 1994 was recently sold by public tender for 40,200 Dollars. It seems unbelievable, but I have documentation, according to which 2 valuers agreed on a price around 300,000 Dollars, while two other valuers regarded the same property as virtually worthless. The Valuer General did not agree with either value and was still significantly wrong in the end.

I acknowledge that real estate values may drop from time to time, but such enormous variances can not be attributed to changed economic conditions alone. In my first case of a deficient valuation, the valuer was admonished and fined by his own institute after an investigation of several months, yet he is still out there practicing his trade as a registered valuer after his loss of indemnity insurance cover. Legal action for damages was initiated in the Supreme Court of Tasmania. When I needed to borrow money from the Trust Bank in an effort to repair the damage caused by the valuer, the bank "suggested" a change of solicitors to prominent Hobart QC David Gunson. Since 1998 this case has been languishing in his office. No hearing in the Supreme Court has been applied for, and one can only ask why. Does Mr Gunson, who runs his own mortgage scheme in his legal firm in Hobart, have an interest in preventing unprofessional and scandalous valuation practices from becoming known to the public in an open Supreme Court trial? It seems that unscrupulous valuers are still required in the trade with valuations of 'convenience'. During an investigation of the Institute of Real Estate Valuers (now regrettably tucked away as an appendix to the Property Institute) a valuer gave evidence that he thought he was "supposed to justify the price" as instructed by a real estate agent, while I (the purchaser) paid the valuer's bill, and the vendor more than doubled his money within 5 years in a falling real estate market. I note that Toomey, Maning & Co will make representations for consumer investors at 10.30 hours at the Hearing on 18 May 2001. This legal firm is also defending valuer Peter Brownrigg, who overvalued our old house by 450%, and makes every effort to delay our case for compensation.

Deficient valuations are not only a problem for lenders, but also borrowers and businesses with real estate assets. Borrowers can rightfully expect to recoup money borrowed through a sale, if it becomes necessary, because security ratios seem to be prudent. If, however, the property is overvalued, proceeds from a sale may not even cover the mortgage debt. I hear that desperate borrowers have on occasion reverted to arson in an attempt to escape from the overvaluation trap. Property valuations also flow into balance sheets. Overvalued property assets create unreal ("virtual") profits, which are subject to taxation and reduce working capital. The practice of overvaluing is widespread. I think that one reason for this problem is the fact that valuers charge their fees based on a percentage of the value they establish themselves, the higher the value, the higher the fee. I regard this kind of fee structure as too tempting and, therefore, unacceptable.

Real estate valuations should not only establish realistic values as such, they should also report on other relevant matters: Title details, access conditions, structural and repair status, encumbrances like right-of-ways, easements, caveats, instruments of covenant, geological conditions (for example landslips) etc.. Too often, such details are not reflected in valuation reports. In my case, I needed to buy an adjoining property for 92,000 Dollars

61362503609

- 4 -

to comply with access requirements. Our 180,000 house became subject to a Council closure order, some dangerous outbuildings subject to a demolition order.

Naturally, when my claim for damages did not progress, I looked for remedies. A number of complaints against Mr Gunson were made to the Law Society of Tasmania. On the first occasion in 1999, the Society failed to provide a formal complaint form, only advised me that the Society could not help and that I should take legal advice - I suppose from another Tasmanian solicitor and fellow-member of the Law Society. On the next occasion in 2000, the requested complaint form was received and returned by me with explanations. A 'case manager' was appointed by the Society. Four complaints were dismissed by the Society without any effort to access Mr Gunson's file on my case. Regardless of my enquiries with the Law Society, I knew nothing about the function or standing of a 'case manager' until he contacted me by phone on 14 May 2001. Such an important and obviously powerful delegate finds no mention in the Legal Practitioners Act. It seems to be standard practice within the Society to take a solicitors' statement as proof absolute, while the complainant needs documentation of much higher credibility and standing. Nevertheless, when I could prove that Mr Gunson made untrue statements in writing, the Law Society obviously decided that silence would be the best policy under the circumstances. My last four letters to the Society have remained unanswered until 12 May 2001. I received this letter on the 14th May 2001. The truth must be very painful to digest, when a cover-up is the order of the day. I believe that the recent "action" of the Law Society was prompted by the impending Senate Enquiry and my decision to make a submission.

Truth itself can be a double-edged sword. Mr Gunson assured me on many occasions that it would take 3 months or so to get our case into Court. When years went by, my wife decided that she wanted to see Mr Gunson and seek information from him herself. My wife is of Chinese origin and took the precaution to take an interpreter to the meeting with Mr Gunson. My wife remembers that Mr Gunson told her that our case would be ready for trial in July 1999, and the interpreter, Mr Man can confirm this.

The Legal Ombudsman (in this case an Ombudslady) was finally contacted and aware of the complaints against Mr Gunson. In disbelief I learned that the position of Legal Ombudaman is a part-time position without proper administrative back-up. I ask: How can the Legal Ombudsman's Office (with an answering machine responding in most cases) hope to supervise and control the much better equipped bureaucracy of the Law Society? I admire her stance on the Fol issue, but honestly, what chance would she have against the Law Society, which seems to operate like a secret society and can call on the resources of the combined legal minds in the State?

I knew for years that something was terribly wrong, although I was unaware of some of the background at the time. Years ago, I felt compelled to made a number of recommendations to the Tasmanian Government at the highest level, for example, that real estate valuers should need indemnity insurance to be registered, and that indemnity insurers should not be able to withdraw cover while a claim is pending. If nothing else, such requirements would produce a higher degree of vigilance and compliance with legal and professional guidelines. I have since discussed this matter with the Australian Prudential Regulation Authority (APRO) and the Australian Securities and Investments Commission (ASIC). It seems that relevant existing Acts are inconclusive. Nevertheless, in this painful and potentially destructive legal vacuum, the Tasmanian Government has not seen any need to introduce legislation to protect Taamanian consumers and investors.

Today, I feel that I should make several additional suggestions to the Government, which I shall list on the last page of my letter.

61362503609

- 5 -

Making these suggestions, there may be a good reason for the Government's hesitation to make the system fairer. Firstly, the ultimate conflict of interest: There is an unproportionately high number of lawyers in all Parliaments of Australia as well as Local Government. I do not think that legal practitioners should also be lawmakers. Secondly, the State depends on Land Tax revenue, Councils depend on rates. If Government valuations were brought into line with realistic market and security values, State's and Councils' revenue could be slashed substantially. It appears that some of our politicians were extremely courageous in calling for a Senate Enquiry, and I am grateful for the opportunity to make a submission. This issue is not a matter of slapping the hands of a few 'naughty boys' in the legal profession. I have suffered in many cases, because lawyers were dishonest, negligent, incompetent and "non-arms-length". I could document these cases, however, I better refrain on this occasion because of the Enquiry's limited terms of reference.

I can understand problems with legal practitioners and registered valuers, who sometimes fly together by the seat of their pants. I also understand that the Law does not necessarily translate into justice or equity, unfortunately sometimes the opposite. What I cannot understand, however, is the Tasmanian Government's lack of understanding of fundamentals. We know that Tasmania's population is shrinking. Workers without jobs, new arrivals, who refuse to be exploited and often cheated by the "old boys network", industrialists, farmers and tourist operators who are lorded over by "green" activists better described as "red", cannot be blamed for turning their back on the State. More and more old people disappear into nursing homes, leaving empty accommodation behind. Every newly built house creates another vacancy in an old one, and there is nobody there to fill the vacancies. These trends create a massive oversupply of real estate product. We should remember this, when we proudly celebrate a flood of new building approvals (in Tasmania). Values are falling in all but the few most attractive areas, and this trend will continue until the Tasmanian Government stops to waste money on marketing orientated "population taskforces" and instead creates the legal framework to ensure that newcomers to Tasmania can make an honest living proportionate to their skills, experience, industriousness and ability to invest.

The Mercury in Hobart documented that the problems with Lawyers Investment Schemes go back to the 1960s. Investors, who have done nothing wrong except trusting the wrong advisor(s), die and endure extreme hardship. However, after 40 years of such problems, Governments of both persuasions have not been able to resolve the matter in any acceptable way. Is there a cynical strategy, that investors with problems should die and borrowers with problems should go bankrupt (or both) for the problem to "go away"? This strategy will not work, while such schemes are still in place. We are dealing with generations of victims, and only determined and coordinated Government action can bring relief.

61362503609

- 6 -

RECOMMENDATIONS**Relating to Practicing Lawyers:**

* Goods and services are generally supplied on the basis of written agreements (quotation, purchase order etc.). Lawyers should be required to complete with their clients a 'Service Agreement' document in a form prescribed by Law, to state the client's exact instructions and estimates of the lawyer regarding (total) costs, a time frame for the completion of the service and - In litigation - the chances of success on a percentage scale.

* That lawyers should receive significantly reduced fees, if the forecast chances of success (as stated in the above mentioned 'Service Agreement') have been significantly overestimated by the lawyer, once a Court has made a decision. This would give more incentive to the lawyer to serve his client well and less incentive to accept frivolous, vexatious or plain hopeless cases.

* That lawyers be required to report to their clients on progress in writing at regular intervals, at least every 3 months.

* That lawyers, who make mistakes through negligence or cause unnecessary delays, be required to compensate the disadvantaged client in accordance with the ruling of a special tribunal to be established on a national basis (Circuit Tribunal)

* That lawyers be required to display in their reception area a 'Schedule of Interests', to include real estate investments, shareholdings, directorships, etc.

Relating to Registered Real Estate Valuers:

* That valuers require indemnity insurance to keep their registration current

* That the indemnity insurance company and policy number be quoted on valuation documents and letterheads

* That valuers fees be calculated on the current Government valuation, rather than new values established by the valuer

* That valuers be required to disclose an interest, if they own property in the vicinity of a property to be valued

* That valuers convicted of fraud or negligence be de-registered for a term specified by Law

Relating to The Law Society of Tasmania:

* That the President of the Law Society be required to be a Magistrate or a legal expert, who is not involved in the practice of Law in Tasmania

* That the Law Society be required to comply with Freedom of Information legislation

* That the Law Society not be allowed to refuse to answer phone calls, unless such calls are abusive

* That the Law Society be required to offer mediation in case of complaints, unless investigations are completed within 6 months.

* That the Law Society's By-Laws be made public

Relating to Supervision of the Law Society:

* That the Legal Ombudsman be elevated to the the position of Legal Commissioner

* That the Legal Commissioner be a person, who has not practiced Law in Tasmania (at least for a very long period) and who is not involved in any Tasmanian law firm

* That the Legal Commissioner's office be staffed and equipped to function efficiently

* That the Legal Commissioner be given access to the Law Society's files

Relating to Lenders:

* That recovery of lenders of any description - In case of foreclosure and default of a borrower - be limited to the proceeds from the sale of the mortgaged property or business. A lender's recourse to bankruptcy proceedings can not only ruin an innocent borrower, who has been the victim of fraud or negligence of third parties, but such action is also likely to disadvantage other (more cautious) lenders, creating a domino effect

61362503609

- 7 -

* That borrowers, who have become victims of fraud or negligence of third parties and can not repay the lender in full, are required to allow the lender to recover outstanding balances from such third parties

* That lenders provide all advice or recommendations to the borrower in writing

Relating to Indemnity Insurance:

* That indemnity insurers be required to pay the third (injured/damaged) party first, with the right to recover from the insured in due course

* That insurers not be permitted to cancel insurance cover, while a claim is pending

Relating to Taxes and Rates:

* That former owners of land sold by auction or tender below Government valuation prices be entitled to a proportional refund of Land Tax and/or Council Rates

* That all Land Tax and/or Rate notices be required to show full title details for the property(ies) involved

Relating to Savings for Consumers in regard to Legal Documentation:

* That relatively simple agreements (rental agreements, residential and simple commercial leases, agentment agreements, transfers and assignments of fishing licenses, etc.) be made available through stationers and/or newsagents in standard draft form to an approved Government standard, for both parties to complete the details, and the completed document to be signed before a JP

I apologize to the Committee for the poor presentation and the poor format. I did not see the advertisement in the Hobart Mercury until 2 May 2001, and I have been in a hurry to complete this document to ensure postal delivery to Canberra within the published deadline. When I was asked by the Committee to revise my submission, I was again under pressure for time.

Yours faithfully,


Peter V. Rang-Scheit
FIDA, FAICD, NMIPA, AFAMI, MMRT