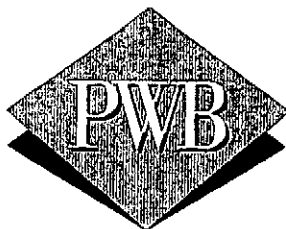


**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (a)**

Submission No. 176

Submittor: Piggott Wood & Baker, Barristers &
Solicitors
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PIGGOTT WOOD & BAKER
Barristers & Solicitors

DMS:KNS:

30 May 2001

Attention: Anne O'Connell
Senate Select Committee
on Superannuation and Financial Services

Fax: (02) 62773130

Dear Madam

Senate Inquiry into Solicitors Mortgage Schemes in Tasmania

Please find enclosed our response to the various submissions put to the Senate Committee when it was sitting in Hobart.

Yours faithfully
PIGGOTT WOOD & BAKER

Per: 

DAVID SMITH

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RESPONSE TO SUBMISSION NO. 119

It is the nature of a contributory mortgage that the funds from generally more than one investor make up the loan. It is normal practice in a contributory mortgage for invested funds to be moved from one loan to another if that is necessary as part of the management of the fund as a whole. It would be a necessary step, for example, if the borrower of a particular loan repaid the loan, necessitating the placement of those invested funds in another loan or loans.

When this investor declined to join with other investors in consenting to the transfer of a particular loan to the Perpetual Trustees Fund her investment was quite properly transferred to another contributory mortgage loan, enabling all the investors in her original loan to be transferred to Perpetual Trustees in accordance with their wishes.

The result was a satisfactory and proper outcome for the investors who were transferred and for Mrs Hills. The loan to which her money was transferred was repaid and full payment of capital and interest was made to her.

All of the information to which Mrs Hills refers would have been provided by the Mortgage Information Desk which we have maintained since commencing the winding-up of our mortgage register.

RESPONSE TO SUBMISSION NO. 128

Valuations of properties where trading is carried on or is intended to be carried on would commonly include consideration of projected earnings. Independent valuations are prepared by registered valuers who are made aware that the purpose of their valuation was for consideration as to whether the property was suitable mortgage security. It is the responsibility and the expertise of the valuer to determine value in taking into account all relevant matters including projected rental value or trading value of a property if the valuer considers that relevant.

We have taken legal action against valuers in relation to loans where we have been advised that their valuation was prepared negligently and without proper consideration of all factors.

In a mortgage register it is inevitable that some interest payments are made late. Our investors were specifically made aware of this and were advised that the firm would, at its discretion, advance interest itself while action was taken to recover the interest arrears.

The mortgage register was operated in compliance with Law Society Rules of Practice and were secured by first mortgage over land. Except where written consent is obtained such security must be by way of first mortgage.

RESPONSE TO SUBMISSION NO. 129

Loans were made in compliance with Law Society Rules of Practice. It was not a requirement nor did PWB ever represent that certain types of Tasmanian land would be excluded from consideration as mortgage security.

In normal circumstances one month's notice was adequate for the withdrawal of funds. The firm's decision in 1998 not to accept any further funds for investment inevitably meant, because it was a contributory mortgage fund, that investors funds could only be repaid after the transfer or calling in of loans.

Ms Harris has had innumerable communications with our firm and has been provided with detailed information including information about security properties with which she is concerned. The property at 35 Main Street, Bridport, consists of accommodation units with a restaurant and convention centre. It has never been and would never be described by anyone in our office as a tea room and we can only attribute Ms Harris' suggestion that it was called a tea room to something misheard during a conversation, possibly a reference to convention room.

The loans with which this investor was associated were made in compliance with Law Society Rules of Practice and a current valuation was obtained from a registered valuer. From time to time borrowers in any mortgage fund are late with interest payments. Our investors were advised of this possibility at the time when they invested.

A mortgagee has limited power to influence the actions of a borrower. The valuation of the Ravenswood property to which this investor refers did not assume any significant return from accommodation at all.

The appointment of a liquidator to manage a business conducted on a property is, because of the cost and other implications, always a last resort for a mortgagee but in this case it was considered to be a prudent step to protect the value of the property.

A valuer of a security property is responsible to the firm and the valuation is addressed to the firm.

In reaching his valuation a valuer normally relies on a range of information about the subject property and comparable properties.

Following receipt of advice Piggott Wood & Baker has, on behalf of investors concerned with the Ravenswood property, commenced proceedings for negligence against the valuer who prepared the valuations upon which the loan to the borrower was based. The firm is reasonably confident that these proceedings will in due course have a successful outcome.

For the most part, borrowers in the Piggott Wood & Baker fund have acted responsibly and cooperatively in the winding-up process. A few have been less than cooperative and in the case of the Archers Manor loan a decision was taken that it would assist the marketing and sale of the security property if possession of part of the security property was obtained from the borrower. The firm commenced proceedings for possession which were "defended" by the borrower, not "discharged".

Ultimately we were able to obtain possession of part of the security property and significant progress in the calling-in of the loan has been made. Part of the security property has been sold and negotiations are continuing in relation to the balance. Investors should shortly receive a part-repayment of capital.

As part of its program of providing information to investors, as well as providing quarterly detailed reports the firm has also maintained a Mortgage Information Desk so that investors can obtain up-to-date information. However, the firm can only provide such information as it has. We have no objection to Mrs Harris calling our Mortgage Information Desk each day to see if there is any new information.

The marketing of security properties in a depressed economic environment is notoriously difficult. Piggott Wood & Baker has been vigorous and unstinting in its efforts. Initially the firm engaged a chartered accountant to review any loans where a borrower might face difficulty. The firm has also used Knight Frank to review the marketing of any properties which have not sold quickly. Because of their pre-eminent reputation in marketing Tasmanian hotel properties Knight Frank has also been used to advise in the marketing of any hotel properties. Around 90% of all loans have either been transferred to Perpetual Trustees, repaid or the security property sold and the firm constantly reviews the marketing of any security properties that remain.

RESPONSE TO SUBMISSION NO. 132

The loan to Everworth (Tas) Pty Ltd was secured by the Rutherglen property, a longstanding Tasmanian tourist development. The loan was the subject of a fresh valuation as recently as November 1995.

As indicated earlier, proceedings in the Supreme Court have been commenced against the valuer of the Ravenswood property.

Negotiations with interested buyers are continuing in relation to the property at 35 Main Road, Bridport. We have been advised that the valuations prepared by the valuer for the purposes of consideration of the loan application were negligently prepared and on completion of a sale proceedings will be commenced against the borrower for negligence.

RESPONSE TO SUBMISSION NO. 134

Government valuation is not a reliable guide to value. It is done irregularly and sometimes without close inspection. It is for this reason that Law Society Rules of Practice require an independent valuation from a registered valuer.

As indicated above, negotiations are in hand for the sale of the property and on completion of the sale, in view of advice already obtained, it is intended to commence proceedings against the valuer for negligence.

RESPONSE TO SUBMISSION NO. 137

Para 7.4

There have not been breaches of trust. Piggott Wood & Baker is well-advanced in an orderly winding-up of its substantial mortgage register. Most security properties have been transferred, refinanced or sold. Sales are achieved in relation to the remaining properties on a weekly basis. Legal proceedings have been taken for negligence against three valuers.

Where appropriate the firm has used consultants. At the commencement of the winding-up a chartered accountant reviewed all loans. Knight Frank were engaged to review the marketing of any properties where sale was required. Independent solicitors have been retained to run the negligence claims against valuers.

Throughout the firm has maintained a program to keep investors informed. This has included detailed quarterly statements to investors and a Mortgage Information Desk where investors can obtain up-to-date information. The firm has endeavoured to deal promptly and responsibly with any correspondence.

When the firm resolved to wind-up its mortgage register in 1998 it notified the Law Society of Tasmania and has cooperated at all times with any inquiries or communications from the Society. About two years ago the firm briefed the Australian Securities and Investment Commission and has cooperated with any inquiry from that organisation.

Para 7.6

Piggott Wood & Baker has worked hard to keep investors informed and details of this are set forth above.

Although the firm maintains that investors have been fully-informed the firm offered to attend an informal conference convened by the Law Society of Tasmania to discuss the provision of information. Unfortunately it appears that the Society did not organise the conference and so it did not take place.

Para 8.2

- (a) Valuations were obtained. About \$30,000 of investors' money is currently secured by this property which is subject to a Government valuation of \$200,000.
- (b) In compliance with Law Society Rules of Practice this loan was at all times secured by a mortgage over a property which had recently been valued. The resort was popular and well-established.
- (c) Each of these properties was the subject of an independent valuation prepared by a registered valuer specifically for the purpose of consideration of the property as mortgage security. The respective security valuations did not report the properties as "speculative" but as suitable security for a mortgage loan. We accept that at least one of these properties was the subject of a negligently prepared valuation and legal proceedings have commenced against the valuer. One of the remaining properties has recently sold at or around valuation. Sales of the other properties referred to have yet to be finalised.
- (d) Any amounts lent to a borrower have been lent in compliance with Law Society Rules of Practice. Independent valuations have been done by a registered valuer which is current at the time of the loan advance. It is not practical for the firm to monitor the application of loan funds.
- (e) It is not practical for a lender to monitor the application of loan funds. The firm did not rely on any valuations that were on their face

unreliable. Rutherglen Holiday Village was a long-established and successful Tasmanian resort. Bridport Hotel is a property which was subsequently sold at or around the value which was asserted in the valuation provided when the loan was originally advanced. The valuation in relation to the Ravenswood property is presently the subject of Supreme Court proceedings against the valuer.