

# Senate Select Committee on Superannuation and Financial Services

## Main Inquiry Reference (a)

**Submission No. 185**  
(Supplementary to Submission No. 152)

**Submittor:** Garrisons Pty Ltd  
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**SUBMISSION TO SELECT SENATE COMMITTEE RE  
SOLICITORS FIRST MORTGAGE FUND ISSUE -  
COMMENTS ON SUBMISSION OF PETER WORRALL**

In accordance with the letter to Garrisons from the Select Committee on Superannuation and Financial Services dated 17 May 2001, this submission is lodged specifically in relation to adverse comments provided by Mr Peter Worrall regarding Garrisons and our Authorised Representative - Mr Mark Hudson.

At the outset, Mr Worrall notes that he was appointed by the Supreme Court of Tasmania as Manager of Lewis Driscoll & Bull on 11 December 1998. At this time, all the problems now uncovered with the mortgage fund operated by Lewis Driscoll & Bull had already occurred. Mr Worrall further states that "even if the account inspector had discovered the full extent of the problems upon his 20 October 1998 inspection, the position had already been reached where all of the disastrous loans were in place. In other words, an adverse report at this stage would not have saved the investors."

Mr Worrall suggests from his review of a portion of a financial plan (not provided to Garrisons) that investment products would be capital guaranteed. Mr Worrall further suggests that this shows a misunderstanding by Garrisons as to what an investment in solicitors' mortgage funds represented. Garrisons contends that no representation was made that solicitors first mortgage funds were capital guaranteed. We further contend, as evidenced in the initial submission, that Garrisons clearly understood the product being recommended - being the solicitors first mortgage fund (not any underlying mortgage).

Mr Worrall notes, based on hearsay from some clients, that Garrisons utilised the solicitors mortgage funds offered by Piggott Wood & Baker, McCulloch & McCulloch and Lewis Driscoll & Bull. Whilst this fact is not disputed, Garrisons also utilised other firms including Butler McIntyre & Butler, Ware & Otlowski (now Ware & Partners), Ogilvie McKenna, ER Henry Wherrett & Benjamin and Murdoch Clark. In addition, Garrisons has utilised other mortgage backed securities via Perpetual Trustees, Tasmanian Trustees, Tasmanian Select Mortgage Fund etc.

Mr Worrall provides an analysis of funds that were invested into the Lewis Driscoll & Bull mortgage fund by Garrisons. Whilst the numbers are not disputed, it should be noted that investments were placed into numerous other mortgage funds during this period. Garrisons did not place \$3.7 Million with Lewis Driscoll and Bull in one hit as has been suggested, but rather the investments were placed over a number of years. The mortgage fund providers utilised were those taking investments at the time, following queries with numerous firms by the relevant adviser.

Mr Worrall, and indeed the Senators on the Select Committee, have queried "what percentage do the Garrisons' investors represent in the problem funds?" If the total default funds are indeed \$20 Million as has been reported, then the figure of 10% attributable to Garrisons' clients would not be unreasonable.

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Mr Worrall also states that “when initially communicating with investors represented by Garrisons, the investors did not receive the correspondence as Garrisons did not forward it to them.” This matter was also discussed and debated during the Senate hearing, and subsequently in the media reports. The actual situation is outlined below.

On 22 December 1998, Mr Worrall provided Garrisons with a letter for clients outlining certain information in respect of his appointment to Lewis Driscoll & Bull. This letter was just over 2 pages in length, not 4 pages as advised by Mr Worrall to the Select Committee.

Mr Mark Hudson, an Authorised Representative of Garrisons, perused this letter and made an assessment that a broader overview should be provided to clients, including a request for a face-to-face meeting with each client to discuss their specific circumstances and options moving forward. Further, Mr Worrall’s letter did not contain specific reference to clients funds (in dollar terms) in default. It was also noted in a number of cases that loans had been referred to by Mr Worrall to which the clients were not exposed. As such, a separate letter was drafted as at the same date and provided to clients. This letter was also in excess of 2 pages, and not simply 10 lines as noted at the Senate hearing and in the media.

Copies of the letters from Mr Worrall and from Mr Hudson to clients are attached to this submission. It should also be noted that the original letter from Mr Worrall was provided to clients by Garrisons in February 1999. The important issue to note is that these letters were written after all the problems had occurred, and, to use the words of Mr Worrall, “the position had already been reached where all of the disastrous loans were in place.”

During the Senate Hearing Mr Worrall referred to an “interview” with Mr Hudson. We are informed by Mr Hudson that this was in fact an informal discussion that occurred on a Saturday in order to assist Mr Worrall in the initial stages of his management of Lewis Driscoll & Bull.

Finally, in Mr Worrall’s submission he advises that the average return to investors since his appointment with Lewis Driscoll & Bull has been 73% of capital. Garrisons confirms that this percentage return is consistent with the return achieved by our affected investors.

John Sikkema  
Managing Director – Garrisons Pty Ltd

30 May 2001

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# LEWIS, DRISCOLL & BULL

BARRISTERS AND SOLICITORS

ESTABLISHED 1885

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

22 December 1998

Our Ref: PRWLK

The Trustees

[REDACTED]  
C/- Garrisons Pty Ltd  
DX 203  
HOBART TAS

amended of the  
request of the  
sender  
Sols/101

Dear Sirs

## Lewis, Driscoll & Bull – Thomas Peter Baron – Mortgage Fund

I am writing to you as I understand you are an investor in the Lewis, Driscoll & Bull Mortgage Fund.

I advise that on Friday the 11<sup>th</sup> of December 1998 the Honourable Mr. Justice Wright of the Supreme Court of Tasmania made an Order under *section 119* of the *Legal Profession Act 1993* appointing me as Manager of the legal practice conducted by Mr. Thomas Peter Baron

The Order made by Mr. Justice Wright was as a result of an application made by the Law Society of Tasmania. I understand that the application was made by the Law Society of Tasmania as a result of Mr. Baron's bankruptcy, which occurred on the 3<sup>rd</sup> of December, 1998.

By virtue of the Order that was made in the Supreme Court of Tasmania, I now have the responsibility of managing the legal practice of "Lewis Driscoll & Bull".

By way of report to you as an investor:

1. There are a small number of mortgages in which there are small amounts of arrears or where the September 1998 payment was overdue but has since been paid. Although no assurance can be given at this stage, these loans may cause problems in the longer term, but appear unlikely to do so.

2. There is also a set of loans which may cause considerable problems.

Investors with money invested through Lewis, Driscoll & Bull's (Thomas Baron's) mortgage fund who have their money invested in the following loans:

Loan Reference	Borrower
950308	Dodge
960349 ✓	Dessipur Pty Ltd

are advised that apparently no payment of the interest that was due at the end of September 1998\* on these loans has yet been paid.

From the information I have at hand there does not appear to be a reasonable prospect of the September interest being received in the near future on these loans.

All of these loans were, as I understand the situation, made on the basis of there being no guarantee of either interest or capital.

The same position continues now: ie in my capacity as manager of the practice of Lewis, Driscoll & Bull, I cannot guarantee the interest or the capital of any loan made by Mr Baron through Lewis, Driscoll & Bull.

I am in the process of taking the normal recovery action under the mortgages, amongst the many things which need to be undertaken in the management of Lewis, Driscoll & Bull under section 119 of the Legal Practitioners Act 1993.

Recovery action under mortgage is usually a long and drawn out process which includes, but is not limited to:

- Making demand for payment.
- Issuing a notice to sell.
- Obtaining fresh valuations of the properties.
- Taking recovery action in the Supreme Court.
- The sale of the property.

None of these steps will be necessary if the borrower either refinances, or sells the property.

The recovery process has commenced. I am in the process of making demand and issuing notices to sell. I have held preliminary discussions with new and independent

valuers, and I have commenced investigating the file documents and circumstances of the loans.

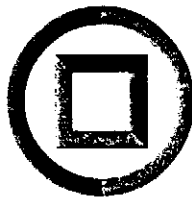
I hope to be able to report to you further just prior to the end of January 1999.

Yours faithfully



Peter Worrall  
Manager under the Legal Profession Act 1993  
Lewis, Driscoll & Bull

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**GARRISONS**  
FINANCIAL & RETIREMENT SPECIALISTS

22 December 1998

*Amended at  
of the request  
of the sender  
30/12/01  
CW*

**RE: 1997/98 FINANCIAL STATEMENTS**

Please find enclosed the accounts for the year ended 30<sup>th</sup> June 1998 for your superannuation fund. The bound copy is for your own records. This year a new reporting format has been used, providing greater details of the funds activities. If you have any difficulties interpreting the format please let me know.

There are separate pages enclosed which require signing and I kindly ask that you organise for the paperwork to be signed where indicated and return back to me at your earliest convenience.

The accounts will be forwarded to the auditor for compliance purposes. Upon receipt of the audit certificate I will on-forward to you for your record keeping.

**First Mortgage Investments:**

There has recently been negative publicity surrounding first mortgage investments. In March/April 1999 there will be some significant changes to the operation of first mortgage investments in Australia, which will most likely have an affect on the return, the liquidity and accessibility of the funds invested. It will potentially also effect the quality of the underlying securities.

In the most recent newsletter of the Law Society of Tasmania (Number 86, December 1998) the following comment was made:

"At its meeting on the 28<sup>th</sup> November 1998 the Council resolved that the Society should no longer have any regulatory involvement in mortgage practices. It will not seek an extension of the ASIC {Australian Securities & Insurance Commission,} exemption currently due to expire at the end of March, next year. Firms which engage in mortgage investment work will have three choices, comply fully with Corporations Law requirements, dispose of their mortgage practices or out source their mortgage practices to a Responsible Entity.





GARRISONS

The Society will seek changes to the Legal Profession Act to ensure that the Solicitor's Guarantee Fund is no longer subject to mortgage fund default claims....."

What does this mean to you?

The degree of risk/return no longer warrants retaining the degree of exposure in first mortgage investments. Put simply, if the return is going to be reduced as a result of the above, and ending up only marginally better than retaining money with a bank or trustee company, it is perhaps prudent to re-assess current holding in such investments.

Accordingly I would like to organise a time to see you in January to discuss preferable options. It is important that this be done prior to the changes becoming common knowledge.

Lewis Driscoll & Bull

The legal practice of Lewis Driscoll & Bull is currently in the process of being sold. The first mortgage investment register, as part of the process will be managed and offered for sale in due course. There are currently several parties interested in purchasing the mortgage register.

Currently Mr Peter Worrall of Peter Worrall Lawyers has been appointed by the Courts to manage the above process and although information has yet been formally issued, I have been advised that correspondence will be forwarded over the next few weeks summarising the above.

Your money currently invested in the mortgage register is allocated between several loans. Of these loans, the interest for the quarter ended 30 September 1998 has not been received from the following:

Dessipur Pty Ltd	\$7,664.12
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Mr Peter Worrall is instigating steps to ensure the lenders resolve this matter, this may involve ultimately selling the underlying property. For slow payers, late penalties apply and upon receipt these will be distributed to investors.





GARRISONS

In light of the general comments regarding first mortgage investment already detailed in this letter I would like to further expedite this matter by requesting the current funds be redeemed back from Lewis Driscoll & Bull at the earliest opportunity. I have enclosed a form for you to sign to authorise this action.

I look forward to seeing you in the New Year.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Hudson', written in a cursive style.

**MARK HUDSON B Comm CA**  
**AUTHORISED REPRESENTATIVE**