



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

## **Main Inquiry Reference (a)**

**Submission No. 190**

**Submittor:**      **Legal Ombudsman, Tasmania**  
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## Legal Ombudsman

20 May 2001

The Chairman  
Senate Select Committee on Superannuation  
and Financial Service  
Parliament House  
CANBERRA ACT 2600

Dear Sir,

### **Re: Inquiry into Solicitors' Mortgage Schemes.**

You will recall that you agreed that I could make a statement to the Select Committee and I thank you for giving me that opportunity.

I did not put in a submission to the Committee because I did not see my role as having any direct bearing on the terms of reference of the Committee. However, having listened, on 18 May 2001, to the questions and answers on the role, powers and functions of the Legal Ombudsman, I considered it important that a first hand description of the powers and functions of the Legal Ombudsman be provided to the Committee.

### **Powers and Functions of the Legal Ombudsman:**

The powers and functions of the Legal Ombudsman are described under Part 8 of the Legal Profession Act 1993. Part 8 relates to disciplinary proceedings, the investigation of complaints against legal practitioners, hearings before the Council of the Law Society, hearings before the Disciplinary Tribunal, applications to the Supreme Court and the appointment and role of the Legal Ombudsman.

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- (1) The functions of the Legal Ombudsman are-
  - (a) to monitor written complaints and applications under this Part; and
  - (b) to investigate and examine any complaints made by any person in respect of the manner in which an investigation or hearing under this Part has been dealt with; and
  - (c) to investigate any other matter relating to disciplinary proceedings as the Attorney-General may direct.

In addition to the above, as Legal Ombudsman I must also prepare an Annual Report for the Attorney-General and I prepare submissions to such bodies as the Legal Profession Review Body.

It is important for the Committee to note that the Legal Ombudsman is required to undertake all of the above functions with very little resources. The position is a part time one. The remuneration is only \$12,000 a year and the Legal Ombudsman has no support staff. In general, I work one and a half to two days a week.

I monitor the handling of written complaints by attending most, but not all, of the Law Society's fortnightly Investigations Committee meetings, most of the Disciplinary Tribunal hearings and disciplinary hearings of the Council of the Law Society. I also attend some meetings of the Council of the Law Society when disciplinary matters are to be discussed. I receive a copy of all complaints lodged with the Law Society and keep statistics on the nature of the complaints, the time taken to handle them and any trends in the nature and volume of complaints and whether a particular practitioner is receiving a number of complaints against him or her.

If I am concerned with any particular matter I will bring those concerns to the attention of the Law Society and, through my Annual Report or a special report, to the attention of the Attorney-General.

In relation to the investigation of complaints about the manner in which a complaint has been dealt with by the Law Society, it is important to note that the Legal Ombudsman does not have the power to investigate the actual complaint but only the manner in which it has been handled. Therefore, except in the case of delay, before I can consider a request, the Law Society's investigation must have been completed.

**Complaints about Mortgage Schemes:**

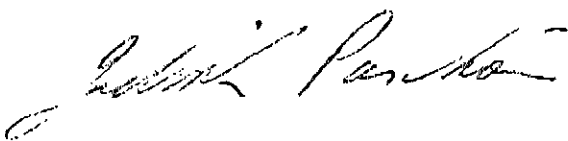
The majority of people who have approached me about their investments in lawyers' mortgage schemes were concerned at their inability to get any information from either the firm concerned or the Law Society and delay in the finalisation of the investigation of their complaint if they had lodged one.

In addition to bringing these concerns to the attention of the Law Society, in early 1997, I reported to the Attorney-General on the progress of investigations into complaints about some of the McCulloch and McCulloch mortgages and, in 1999, I wrote again to the Attorney-General about delay in the McCulloch matters and investors inability to get information in relation to investments with Piggott, Wood & Baker. As a result, the Attorney-General requested a report from the Law Society.

Further, in about October last year, because I was uneasy about the Piggott, Wood and Baker complaints, I sought briefings from both the Law Society and the DPP. I particularly wanted to know whether the matters complained of were about defaults and, if so, whether the Law Society should seek default orders.

I am prepared to answer, in person, any questions the Committee may wish to put to me

Yours sincerely,



Judith Paxton  
**Legal Ombudsman**