

# Senate Select Committee on Superannuation and Financial Services

## Main Inquiry Reference (a)

### Submission No. 221

(Supplementary to Submission Nos. 91, 94, 116 & 215)

**Submittor:** Australian Securities & Investments  
Commission  
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## ASIC

Australian Securities & Investments Commission

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Ms Sue Morton  
Secretary  
Senate Select Committee on Superannuation  
and Financial Services  
Parliament House  
Canberra ACT 2600

Dear Ms Morton

I refer to the recent appearance by the Australian Securities & Investments Commission (ASIC), before the Committee in the context of the hearing on prudential supervision, global financial services and superannuation guarantee charge held on Tuesday 12 June 2001 in Sydney.

The following information is in response to a question that ASIC officers took on notice from Senator Sherry in relation to the Tasmanian Law Society (page SFS 1136):

The relief approved under Class Orders issued by ASIC exempted solicitors mortgage businesses from being regulated as prescribed interests and managed investments schemes. The Class Orders did not exempt the Law Societies or other supervisory bodies from complying with the disclosure, prescribed interests or management investment requirements of the Law. They are, and were, not carrying on mortgage investment businesses that required regulation. Rather, as is the case with the ISB rules, the Law Societies rules are a substitute mechanism for regulating and monitoring the operators' management and conduct of the scheme.

If an operator fails to comply with the standards required under the Law Society rules, it is the solicitor, or operator, which is in breach of the regulations, procedures and standards imposed under the rules. By breaching the rules, the operator will also be in breach of the Class Order Relief and the Law. This entitles ASIC to take action against the operator.

ASIC does not have statutory power to enforce performance by a Law Society of its supervisory functions and audits under the rules. If the Law Societies fail to monitor and supervise operators under their rules, or fails to identify, report or take action against a defaulting operator, then it would be open to ASIC to revoke the Class Order Exemption relief. Such action would require the solicitor to register the scheme in order

to continue operating. ASIC does not have a statutory action against the Law Society directly however as there are no duties under the Law imposed on the Law Societies in connection with operating the mortgage businesses.

On the other hand, if ASIC considered the public interest would be met, it would be open to commence representative proceedings in damages (under s50 ASIC Law or s1325 of the Law) against the Law Societies on behalf of investors for breaches of common duty of care or for other compensatory orders (assuming such actions were available).

I trust that this information has been of assistance.

Yours sincerely

A handwritten signature in black ink that reads "Andrew Larcos". The signature is written in a cursive style with a large initial 'A'.

Andrew Larcos  
ASIC Government Relations