



SPECIAL REPORT OF THE

SELECT COMMITTEE INTO THE FINANCE
BROKING INDUSTRY IN WESTERN AUSTRALIA

IN RELATION TO THE

SUMMONS TO PRODUCE DOCUMENTS
ISSUED PURSUANT TO SECTION 5 OF THE
PARLIAMENTARY PRIVILEGES ACT 1891

Presented by Hon Ken Travers MLC

Special Report

**SELECT COMMITTEE INTO THE FINANCE BROKING INDUSTRY
IN WESTERN AUSTRALIA**

Date first appointed:

August 17 2000

Terms of Reference:

See Annexure A

Members as at the time of this inquiry:

Hon Ken Travers MLC, Chairman

Hon Graham Giffard MLC

Hon Ray Halligan MLC

Hon Norm Kelly MLC

Hon Greg Smith MLC

Staff as at the time of this inquiry:

Lyn Zinenko, Advisory Officer

Jan Paniperis, Senior Committee Clerk

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*PARLIAMENTARY PRIVILEGES ACT 1891***

1 INTRODUCTION

- 1.1 The current Select Committee into the Finance Broking Industry in Western Australia (“Committee”) was appointed on August 17 2000. A copy of the order of reference from the Legislative Council appointing the Committee is attached and marked ‘Annexure A’.

2 SEQUENCE OF EVENTS

Committee’s request for documents

- 2.1 On October 6 2000 Mr Gerald Milford, Registrar, Finance Brokers Supervisory Board (“FBSB”), Mr Patrick Walker, Chief Executive Officer, Ministry of Fair Trading (“MFT”), and Mr Greg Harvey, Project Officer, MFT, gave evidence to the Committee. During the hearing the Committee requested that Mr Milford provide to the Committee legal opinions relating to the appointment, powers and duties of supervisors (“Opinions”). Attached as ‘Annexure B’ is an extract from the transcript of evidence for October 6 2000, being exchanges between the Committee, Mr Milford, Mr Walker and Mr Harvey.
- 2.2 On October 9 2000 Mr Milford, Mr Walker and Mr Harvey gave further evidence to the Committee. During the hearing the provision of the Opinions to the Committee was discussed between the Committee and the witnesses. Attached as ‘Annexure C’ is an extract from the transcript of evidence for October 9 2000 being exchanges between the Committee, Mr Milford and Mr Walker.

Response to Committee’s request for documents

- 2.3 By letter dated October 11 2000 to the Committee, Mr Milford responded to the Committee’s request of October 6 2000 for the Opinions. Mr Milford stated that he had obtained preliminary legal advice and advised that he was unable to comply with

the Committee's request. Attached as 'Annexure D' is a copy of the letter dated October 11 2000 from Mr Milford to the Committee.

Resolutions regarding issuing of summons

- 2.4 On October 13 2000 the Committee resolved to issue a summons to appear and produce documents pursuant to section 5 of the *Parliamentary Privileges Act 1891* for Opinions that the FBSB received from:
- (a) the Ministry's legal officers;
 - (b) the Crown Solicitor's Office;
 - (c) Dr Jim O'Donovan (professor of Law at the University of Western Australia); and
 - (d) Mr Michael Corboy (Barrister at the Independent Bar).
- 2.5 On October 20 2000 the Committee resolved to amend the summons by deleting the reference to the Crown Solicitor. The Committee agreed to send the amended summons and that the Chairman have the authority to sign the amended summons.
- 2.6 On October 23 2000 Mr Milford, Mr Walker, Mr Harvey (as Deputy Registrar, FBSB) and Mr Gary Newcombe, Director, Projects, MFT, gave evidence to the Committee. During the hearing Mr Milford advised the Committee that he was no longer registrar of the FBSB and that Mrs Susan Nulsen had been appointed to that position.
- 2.7 On November 2 2000 Mrs Susan Nulsen, Registrar, FBSB, Mr Harvey (as Deputy Registrar, FBSB) and Mr Newcombe gave evidence to the Committee. During the hearing Mrs Nulsen and the Committee discussed provision of the Opinions to the Committee. During that hearing Mrs Nulsen advised the Committee that she was not at liberty to provide the Opinions to the Committee. Attached as 'Annexure E' is an extract from the transcript of evidence for November 2 2000.
- 2.8 On November 6 2000 the Committee resolved to send the amended summons and that the time and date for return of the documents to the Committee be 11.15am on Wednesday November 8 2000.

Service of summons

- 2.9 The summons was issued to Mrs Nulsen as Registrar, FBSB requiring her to attend before and produce to the Committee the documents listed in the summons on November 8 2000 at 11.15am. The summons was served on Mr Gary Newcombe, Director, Projects, MFT on behalf of Mrs Nulsen by Ms Jan Paniperis, Committee Clerk at 9.15 am (approx) on November 7 2000. Attached as 'Annexure F' is a copy of the Summons to Appear and Produce Documents dated November 6 2000 ("Summons").

Attendance pursuant to the summons

2.10 On November 8 2000 Mrs Susan Nulsen, Registrar, FBSB, appeared before the Committee. During the hearing Mrs Nulsen provided the Committee with a letter dated November 7 2000 in which she stated that she was unable to comply with the Summons. In that letter Mrs Nulsen stated that any further request for the documents sought in the Summons should “*be put to the Minister (or his representative in the Legislative Council) and the Attorney General by the Legislative Council*”. Attached as ‘Annexure G’ is a copy of the letter dated November 7 2000 from Mrs Nulsen to the Committee.

Report to the Legislative Council of non-compliance with summons

2.11 On November 8 2000 the Committee resolved to prepare and table a special report to the Legislative Council on the non-compliance of Mrs Nulsen, Registrar, FBSB with the Summons.

2.12 The Committee reports this matter to the Legislative Council.



Hon Ken Travers MLC

Chairman

Date: November 14 2000

ANNEXURE A

Copy of the order of reference from the Legislative Council appointing the Committee



FINANCE BROKING INDUSTRY IN WESTERN AUSTRALIA - APPOINTMENT OF SELECT COMMITTEE

- (1) A select committee of 5 members, any 3 of whom constitute a quorum, shall be appointed.
- (2) The committee be appointed to inquire into and report on reasons for losses associated with the finance broking industry in Western Australia, including but not limited to:
 - (a) the statutory responsibilities relating to the finance broking industry;
 - (b) avenues for legal redress for investors;
 - (c) consideration of the adequacy of existing legislation to prevent a recurrence of the events which led to the loss by investors who relied on finance brokers.
- (3) The committee in its proceedings avoid interfering with or obstructing any enquiry being conducted into related matters and in particular inquiries by —
 - (a) the police;
 - (b) any liquidator or supervisor of any company;
 - (c) the Gunning Enquiry;
 - (d) ASIC; or
 - (e) any prosecution.
- (4) Proceedings of the Committee during the hearing of evidence are subject to SO's 322, 323, 324, 330 and 331 but subject always to the right of any member of the Committee to exclude strangers under SO 358.
- (5) The Committee have power to send for persons, papers and records and to move from place to place.
- (6) The committee report to the House not later than 30 November 2000, and if the House do then stand adjourned the committee do deliver its report to the President who shall cause the same to be printed by authority of this order.

ANNEXURE B

Extract from Transcript of Evidence of Hearing on October 6 2000

(pages 19 – 21))

“ Mr Milford: As to the issue about the Government assuming responsibility for investors’ losses, we made the comment that that is a matter of government policy and therefore is not something about which the ministry or the board could comment. It is important to go through the terms of appointment of supervisors. My statement continues -

- The Select Committee gave Mr Solomon a copy of the instrument of appointment of Mr Conlan by the Finance Brokers Supervisory Board and asked him to comment.

That is my understanding of what occurred yesterday -

He said that in his view many of the powers and duties given to the Supervisor under the instrument of appointment were ultra vires the *Finance Brokers Control Act 1975*.

- This is simply Mr Solomon’s opinion, given without research or detailed consideration.

Presumably.

- The matter of the appointment, powers and duties of the supervisors was the subject of legal advice from: the ministry’s legal officers, the Crown Solicitor’s office, Dr Jim O’Donovan (Professor of law at the University of Western Australia) and Mr Michael Corboy (Barrister at the Independent Bar).
- In addition, the appointment of the supervisor was as the result of an application to, and an order by, the District Court.
- If the Select Committee wishes, it can obtain its own legal advice on this issue, however, on the basis of the legal advice obtained and the fact that the appointment has been before the District Court, there is no reason to prefer Mr Solomon’s view.

The CHAIRMAN: Did the order provided by the District Court include the terms and conditions upon which the supervisor was appointed, or simply that there was approval for the board to appoint a supervisor?

Mr Walker: I am not sure. I would have to check that.

The CHAIRMAN: Are you saying you do not need to check it because the District Court has already signed off on that, and I am assuming from the way this is written that the District Court has signed off on the terms and conditions under which the supervisor has been appointed? Is that what you are intending to convey by this document?

Mr Walker: My understanding was that the terms of appointment of the supervisor would be part of the application. I was not involved in that process.

Hon G.T. GIFFARD: That is an important point, as you would appreciate. If it is not, it is quite misleading.

Mr Walker: Not wishing to mislead the committee, I would be happy to delete that and indicate that we have had three independent legal people provide advice and contrary advice has been given by one lawyer.

The CHAIRMAN: That is a valid point.

Mr Walker: Let us do it that way.

Hon G.T. GIFFARD: Were these three legal opinions provided to the board?

Mr Walker: I believe so.

Hon G.T. GIFFARD: Mr Milford, as registrar of the board, do you have a direction from the minister in the same terms as the direction that the ministry has regarding legal opinions?

Mr Milford: Not that I am aware of.

Hon G.T. GIFFARD: Would you be able to provide those legal opinions to the committee?

Mr Milford: If I have access to them on the board's files, I imagine I would be able to.

Hon G.T. GIFFARD: There is evidence that they were given to the board, so you would be able to as a matter of logic, would you not?

Mr Walker: Mr Chairman, can we clarify what Mr Giffard has said?

Hon G.T. GIFFARD: I asked you whether those three opinions were provided to the board, and you said, "I believe so." I then directed my question to the registrar of the board and asked whether we could have copies of those three opinions.

Mr Walker: We need to ascertain whom they were for, but I do not resile from -

The CHAIRMAN: Why would you provide them for anyone else but the board, in terms of appointing a supervisor?

Mr Walker: I just need to clarify it, that is all. It is important. Mr Milford has received a direction in relation to his role as manager in the ministry.

Hon G.T. GIFFARD: If they were addressed to the board, would you be able to provide them to the committee?

Mr Milford: Yes, if I -

Hon G.T. GIFFARD: Can I take it that that is an undertaking that you will, but you will advise us either way?

Mr Milford: Yes.

The CHAIRMAN: More importantly, could you advise us - if those documents were not documents for the board - on what legal advice the board appointed the supervisor?

Mr Harvey: We will probably take that question on notice if we can, with the legal opinions.

The CHAIRMAN: Unfortunately, one of the committee members has to leave shortly and we will have to finish for today. Mr Walker, I understand you were heavily involved in the discussions relating to the appointment of the supervisors and you certainly attended a number of meetings: Is that correct?

Mr Walker: Not in relation to the appointment of the supervisors.

The CHAIRMAN: In relation to the terms and conditions of appointment?

Mr Walker: No, not that I am aware of. I have been meeting regularly with the supervisors following their appointment, but I do not recall being the subject of a number of meetings in the lead-up to their appointment.

The CHAIRMAN: Maybe not “a number”, but you were involved in at least one meeting prior to the appointment of the supervisors when the terms and conditions were discussed on 16 July. Is that not correct?

Mr Walker: I do not recall a meeting.

The CHAIRMAN: I will quote from a letter that we provided to Mr Solomon yesterday, which was signed by Mr Harvey as deputy registrar; it is on Finance Brokers Supervisory Board letterhead; it is dated 21 July and it is addressed to Mr Mark Conlan of Bird Cameron, chartered accountants; and it states -

Dear Mr Conlan,

ROWENA NOMINEES PTY LTD (RECEIVER & MANAGER APPOINTED)
(PROVISIONAL LIQUIDATOR APPOINTED) - ACN 008 818 273 (“ROWENA”)

Further to your meeting with Pat Walker, Thomas Staples and Diana Newman on 16 July 1999 the following terms and conditions are proposed:

The letter then proceeds to outline all the terms and conditions under which the supervisor is appointed.

Mr Walker: I do not recall that meeting, but I am not disputing that I was at the meeting. I could search my records.

The CHAIRMAN: Perhaps you could see whether you have any notes about that meeting. Perhaps Mr Harvey could advise us when he wrote that letter, if he remembers that letter?

Mr Harvey: I certainly remember the letter. I could not be absolutely certain what was discussed at that meeting. I suggest that it was probably a meeting to discuss rates and charges that the supervisors would levy for their services, but I would need to check my records to see whether that is accurate.

The CHAIRMAN: My initial reaction from reading that letter was that it indicated that the terms and conditions were as discussed at that meeting. That is logical. I do not know whether that would be your assessment, having just heard me quote that letter - the reason you would put that in is that at the meeting the terms and conditions were discussed, and here are the terms and conditions as a result of that meeting.

Mr Harvey: Yes.

The CHAIRMAN: We have strict time lines, and we would appreciate it if you would make yourselves available at 2.30 pm on Monday. The summons we previously issued will stand until that time. Thank you very much for your time. We would appreciate your providing as much of the information that we requested today on Monday afternoon .

Mr Walker: We will do our best.

Hon G.T. GIFFARD: I hope you will be in a position to advise on those opinions on Monday. ”

ANNEXURE C

Extract from Transcript of Evidence of Hearing on October 9 2000

(pages 1 and 2)

“ **The CHAIRMAN:** Given that you have appeared before the committee previously, I will not go through the details about the transcript and term of reference (3). You are well acquainted with the procedure for giving evidence in private.

At last week's meeting you undertook to provide a range of documents and other pieces of information. Are you in a position to provide any further information?

Mr Walker: I undertook on Friday afternoon to provide a copy of the briefing note about any request for additional resources by the Finance Brokers Supervisory Board. I have a briefing note dated 4 September 2000.

Hon Graham Giffard asked Mr Milford about the legal opinion the board received. Since appearing before the committee, we have endeavoured to get the Crown Solicitor's advice on whether Mr Milford has been captured by the direction from the minister. Members may recall that Mr Milford is an employee of the ministry and is also the registrar. Preliminary advice indicates there may be some difficulty with Mr Milford. The Crown Solicitor was absent and we hope to be able to clarify that position tomorrow, and we will do so. Preliminary advice suggests that there is a difficulty for Mr Milford, but it is not certain. We want the opportunity to consult with the Crown Solicitor and we will be in a position to advise the committee tomorrow.

Hon G.T. GIFFARD: Have you raised it with the minister?

Mr Walker: I have raised it generally with the minister.

Hon G.T. GIFFARD: I understand the minister's view is that he cannot direct the board. I thought it was the board's opinion the committee was seeking.

Mr Walker: The issue is whether that opinion applies to Mr Milford as a ministry official. It also relates to the view adopted by the minister in consultation with the Attorney General about whether it is a crown document and the Crown's waiving privilege to it. None of us is a lawyer, and that is the reason we have sought that advice. We have indicated that it is urgent, and we undertake to give you a response tomorrow.

Hon NORM KELLY: Do Mr Milford's responsibilities relate, firstly, to the ministry and, secondly, to the board?

Mr Walker: If you are talking about an order of priority, it does not flow that way. Mr Milford can speak for himself, but I am keen to ensure that he does not place himself in jeopardy in terms of the Public Sector Management Act and any direction from the minister.

The CHAIRMAN: Although a request from this committee would also place him in jeopardy. Mr Milford, just so that we can avoid the problem down the track, would you be happy, if you were able to do it without breaching the Public Sector Management Act, to provide a copy of that document to this committee without a formal subpoena for it?

Mr Milford: I am just concerned that I am in a somewhat unique position, and I would be guided by the Crown Solicitor as to what I should and should not provide to the committee.

The CHAIRMAN: I understand the uniqueness of your position, and that is why I am trying to be flexible about the situation by giving you time to seek legal advice on that complexity. However, if that legal advice is that you are in a position to provide that document as the registrar and an official of the board, and it is not captured by an instruction to you as a public sector official, will you be able to provide that document to us, or will you require that document to be formally subpoenaed, because if you indicate that you will require it to be formally subpoenaed, the committee will need to go down that path as quickly as possible? That may also create some problems for you, because if we issue a subpoena and you then get the Crown Law advice, you may be in even worse jeopardy. I do not want to be flippant about it. I am trying to avoid that jeopardy.

Mr Milford: Hopefully the Crown Solicitor will take into consideration whether the document can be subpoenaed in any event. I will be guided by him as to whether there is any legal impediment.

The CHAIRMAN: I understand that. I accept Mr Walker's comment that there may be some instruction from the Attorney General about the Crown's right to that document as a document of the board, and I look forward to seeing that advice. However, if it is found that the minister's instruction does not apply to you, is there any other reason that will prevent you from providing a copy of that document to us, and will you be happy to provide it to us, or will we need to subpoena it, because if that is what we need to do, I will be happy to proceed down the path of determining with my colleagues whether we wish to issue a subpoena for that document?

Mr Milford: Assuming there are no other legal impediments, I will be happy to provide it. ”

ANNEXURE D

**Copy of letter dated October 11 2000 from Mr Gerald Milford, Registrar, FBSB, to the
Committee**



fair trading



Ministry of Fair Trading
ABN 19 147 003 635

Forrest Centre
219 St Georges Terrace Perth
Western Australia 6000

Locked Bag 14
Cloisters Square
Western Australia 6850

Telephone 08 9282 0777
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The Hon. Ken Travers MLC
Chair Select Committee into the Finance Broking Industry
Parliament House
PERTH

By Facsimile: 9222 7809

Dear Mr Travers

REQUEST FOR LEGAL OPINION

I refer to your request when I appeared before the Committee on 9 October 2000, that I provide to the Committee legal opinions relating to the appointment of supervisors in the Grubb and Global Finance matters. As I have not yet had access to Hansard to determine precisely which legal opinions the Committee is seeking, I have assumed that the request was broad and that it related to all legal opinions relating to the appointment of supervisors.

I have now obtained preliminary legal advice from the Crown Solicitor's Office and advise that I am unable to comply with your request for the following reasons:

Secrecy

Section 88 of the *Finance Brokers Control Act 1975* prohibits me as Registrar from releasing any information concerning the affairs of another person except in relation to a duty under that Act. Some of the documents requested by the Committee contain information which is within Section 88 of that Act.

Direction

I understand that Mr Patrick Walker has previously informed the Committee of a direction given by the Minister for Fair Trading on 17 July 2000, directing that neither the legal opinions referred to in Clause 6 of the summons dated 11 July 2000, nor the instructions requesting those opinions, are to be provided to or made available to the Committee. I attach a copy of that direction for your information.

I am advised that this direction applies to me, both in my capacity as Registrar of the Finance Brokers Supervisory Board and as the Manager, Finance Industry Branch in the Ministry of Fair Trading, as the *Finance Brokers Control Act* specifies that the Registrar is a public servant appointed under Part 3 of the *Public Sector Management Act 1994* (see Section 12 of the *Finance Brokers Control Act*). As such, I am subject to any lawful direction of the Minister.

Legal Professional Privilege

I am advised that legal professional privilege is claimed in respect of the requested documents and that therefore it is appropriate for the Committee to raise this matter with the Attorney General.

Advice Given by Law Officers of the Crown

One of the requested documents is a legal opinion from the Crown Solicitor's Office, and I am advised that it is therefore the subject of legal professional privilege in respect of advice given by law officers of the Crown. The Crown Solicitor's Office has advised that such opinions are not provided in evidence before a select committee and that it is not aware of any instance where either chamber of the Western Australian Parliament has not accepted a claim of legal professional privilege in respect of advice given by law officers of the Crown. In this regard, the Crown Solicitor's Office referred to the 21st Edition of *Erskin May* at page 383.

For the above reasons and in accordance with the direction of the Minister, I suggest that any further request for these documents be put to the Minister (or his representative in the Legislative Council) and the Attorney General by the Legislative Council. I understand that the Attorney General is of the view that this is a matter which should now be dealt with by the Legislative Council and not by the Committee.

Yours faithfully



Gerald Milford
REGISTRAR, FINANCE BROKERS SUPERVISORY BOARD &
MANAGER, FINANCE INDUSTRY BRANCH

11 October 2000



MINISTER FOR LANDS; FAIR TRADING;
PARLIAMENTARY AND ELECTORAL AFFAIRS

11TH FLOOR, 2 HAVELOCK STREET, WEST PERTH, WESTERN AUSTRALIA 6005
TELEPHONE: (08) 9213 6500 FACSIMILE: (08) 9213 6501

Mr Patrick Walker
Chief Executive and Commissioner for Fair Trading

This is to confirm that, having discussed with the Attorney General the summons to you dated 11 July 2000 from the Select Committee with the Finance Broking Industry in WA, I directed you as follows:

1. The legal opinions referred to in clause 6 of the summons, and the instructions requesting those opinions, are documents, which are held by and for me, and to which legal professional privilege applies.
2. Neither the legal opinions nor the instructions requesting those opinions are to be produced to, or made available to, the Select Committee by you or any of your officers.
3. You should advise the Select Committee of this instruction, and inform them that any requests for legally professionally privileged material such as the above should be put to me and to the Attorney General by the Legislative Council.

Doug Shave MLA
Minister Fair Trading

17 JUL 2000

ANNEXURE E

Extract from Transcript of Evidence of Hearing on November 2 2000

(pages 19 – 20)

“ **Hon NORM KELLY:** Ms Nulsen, is it your understanding that the minister has the power to direct the board, or the board’s officers?

Ms Nulsen: My understanding is that the minister does not have the power to direct the Finance Brokers Supervisory Board.

Hon NORM KELLY: Or the board’s officers, and staff?

Ms Nulsen: My understanding is the minister has the power to direct all the officers of the board, who are appointed as public servants under the Public Sector Management Act.

Hon NORM KELLY: Are you a full-time registrar for the board?

Ms Nulsen: That is the position I hold, but I am an employee of the Ministry of Fair Trading, and of the Government. Public servant is the nature of my appointment.

Hon NORM KELLY: Who do you feel you are responsible to?

Ms Nulsen: I have a job description which makes me administratively responsible to the chief executive officer of the ministry through the director of industry and consumer services, and functionally responsible to the chairman of the board and the board, but my understanding is that I am bound in the same way that all other public servants are, under the Public Sector Management Act.

Hon NORM KELLY: Are you aware of directions from the minister in regard to the legal opinions we have been talking about today?

Ms Nulsen: Yes, I am.

Hon NORM KELLY: What is your understanding of that direction?

Ms Nulsen: That those legal opinions are subject to legal and professional privilege, and I am not at liberty to provide them if requested.

Hon NORM KELLY: The committee does not agree with the arguments that have been provided to it by the previous registrar as to arguments about withholding those legal opinions. Hopefully we have made it clearer today that it is difficult, when we are deciding the merits of the case one way or another. We have been provided with a number of legal opinions saying that the board or the Ministry of Fair Trading has acted beyond its powers in the appointment of the supervisor, and we do not have any supporting evidence to say otherwise. That is one of the reasons we are keen to have a look at the legal opinions that you say support the appointment of Mr Conlan. It makes it very difficult for us to support your arguments when we produce our report. I imagine, from your last comment, that the situation remains the same, that you will not be providing any of those legal opinions of the ministry’s legal officers, Professor Jim O’Donovan and Mr Michael Corboy. Is that correct?

Ms Nulsen: That is correct. I understand the directive from the minister precludes me from doing that.

The CHAIRMAN: Have you sought independent legal advice on that?

Ms Nulsen: I have not.

Hon NORM KELLY: Do you think it would be warranted to obtain legal advice on whether that was a legal direction?

Ms Nulsen: I may well do so. I had not realised that I was going to be asked about that.

Hon NORM KELLY: I appreciate that we have brought you in cold. ”

ANNEXURE F

Copy of the Summons to Appear and Produce Documents dated November 6 2000

LEGISLATIVE COUNCIL



SELECT COMMITTEE INTO THE FINANCE BROKING INDUSTRY IN
WESTERN AUSTRALIA

SUMMONS TO APPEAR AND PRODUCE DOCUMENTS

Take notice that you Susan Nulsen, Registrar, Finance Brokers Supervisory Board, are ordered to give your attendance before and produce the documents listed below to the abovenamed Select Committee on Wednesday November 8 2000 at the Legislative Council Committee Office, Ground Floor, 1110 Hay Street, West Perth at 11.15 am and remain in attendance on the Committee until released by further order:

DOCUMENTS TO BE PRODUCED:

The legal advice in relation to the matter of the appointment, powers and duties of the supervisors that the Finance Brokers Supervisory Board received from:

- (a) the Ministry's legal officers;
- (b) Dr Jim O'Donovan (professor of Law at the University of Western Australia); and
- (c) Mr Michael Corboy (Barrister at the Independent Bar).

If originals of any of the above documents are not within your possession or control, then the production of copies, certified to the satisfaction of the Clerk of the Legislative Council, may be produced in lieu of that document.

Issued by the Clerk of the Legislative Council on this 6th day of November 2000.

Clerk of the Legislative Council

Authorised by the undersigned Chairman of the Committee on this 6th day of November 2000.

Chairman

ANNEXURE G

**Copy of the letter dated November 7 2000 from Mrs Susan Nulsen, Registrar, FBSB to
the Committee**

FINANCE BROKERS SUPERVISORY BOARD

Forrest Centre
219 St Georges Terrace Perth
Western Australia 6000

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Western Australia 6850

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The Hon Ken Travers MLC
Chair Select Committee into the
Finance Broking Industry
Parliament House
PERTH WA 6000

Dear Mr Travers

REQUEST FOR LEGAL OPINIONS

I refer to the Summons issued on 6 November 2000 ordering me to appear before the Committee on 8 November 2000. I have been ordered to produce to the Committee documents containing legal advice in relation to the matter of the appointment, powers and duties of the supervisors which have been received by the Finance Brokers Supervisory Board from particular sources.

In writing this letter I am relying on preliminary legal advice provided by the Acting Principal Legal Officer of the Ministry of Fair Trading and advice provided to the previous Registrar by the Crown Solicitor's Office. I believe that I am unable to comply with the order to produce documents containing legal advice received by the Board for the reasons set out below. I have requested separate advice from the Crown Solicitor's Office but, as of the date of this letter, I have not yet received that advice.

Direction from the Minister for Fair Trading

On 17 July 2000 the Minister for Fair Trading issued a direction that any request for legally professionally privileged material should be put to him or to the Attorney General by the Legislative Council, and that the Select Committee be advised of this instruction. A copy of the direction is attached. I understand the direction to apply to the legal advice ordered to be produced in the Summons dated 6 November 2000.



in association with the Ministry of Fair Trading



fair trading

I am advised that this direction applies to me in the position of Registrar of the Finance Brokers Supervisory Board, since the *Finance Brokers Control Act 1975* specifies that the Registrar is a public servant appointed under Part 3 of the *Public Sector Management Act 1994* (see Section 12 of the *Finance Brokers Control Act*). As such, I am subject to any lawful direction of the Minister for Fair Trading.

Legal Professional Privilege

I am advised that legal professional privilege is claimed in respect of the requested documents. Therefore, it is appropriate for the Committee to raise this matter with the Attorney General.

Advice Given by Law Officers of the Crown

The Summons issued on 6 November 2000 orders production of documents containing legal advice received by the Board from the Ministry's legal officers. I am advised that it is therefore the subject of legal professional privilege in respect of advice given by law officers of the Crown;. The Crown Solicitor's Office has advised that such opinions are not provided in evidence before a select committee and that it is not aware of any instance in which either chamber of the Western Australian Parliament has not accepted a claim of legal professional privilege in respect of advice given by law officers of the Crown. In this regard, the Crown Solicitor's Office referred to the 21st Edition of *Erskin May* at page 383.

For the reasons set out above, and in accordance with the direction of the Minister for Fair Trading, I suggest that any further request for these documents be put to the Minister (or his representative in the Legislative Council) and the Attorney General by the Legislative Council. I understand that the Attorney General is of the view that this is a matter which should now be dealt with by the Legislative Council and not by the Committee.

Yours faithfully



Susan Nulsen
Registrar
Finance Brokers Supervisory Board

7 November 2000

Encl



MINISTER FOR LANDS; FAIR TRADING;
PARLIAMENTARY AND ELECTORAL AFFAIRS

11TH FLOOR, 2 HAVELOCK STREET, WEST PERTH, WESTERN AUSTRALIA 6005
TELEPHONE: (08) 9213 6500 FACSIMILE: (08) 9213 6501

Mr Patrick Walker
Chief Executive and Commissioner for Fair Trading

This is to confirm that, having discussed with the Attorney General the summons to you dated 11 July 2000 from the Select Committee with the Finance Broking Industry in WA, I directed you as follows:

1. The legal opinions referred to in clause 6 of the summons, and the instructions requesting those opinions, are documents, which are held by and for me, and to which legal professional privilege applies.
2. Neither the legal opinions nor the instructions requesting those opinions are to be produced to, or made available to, the Select Committee by you or any of your officers.
3. You should advise the Select Committee of this instruction, and inform them that any requests for legally professionally privileged material such as the above should be put to me and to the Attorney General by the Legislative Council.

Doug Shake MLA
Minister Fair Trading

17 JUL 2000